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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	Case No. CR-17-0387-CRB-1
)	
Plaintiff,)	UNITED STATES' SENTENCING
)	MEMORANDUM
v.)	
)	
AMER SINAN ALHAGGAGI,)	
)	
Defendant.)	

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1 **I. INTRODUCTION**

2 Beginning in July of 2016, the defendant, Amer Sinan ALHAGGAGI, boasted online about a
 3 series of terrorist attacks he wanted to commit on behalf the Islamic State in Iraq and the Levant
 4 (“ISIL”). His aim was to “redefine terror,” and he promised that if he succeeded, the “whole Bay Area
 5 [was] gonna be in flames.”¹ Among his more vicious attacks, he planned to explode a car bomb outside
 6 a gay nightclub in San Francisco, and plant backpack bombs on routes known to be used by emergency
 7 vehicles, in an effort to kill first responders seeking to aid casualties. Alarmed at the detail,
 8 sophistication, and bloodthirstiness of his plans, a nationwide team of FBI agents worked around the
 9 clock first to identify the defendant, then to surveil him 24 hours a day, and finally to introduce an
 10 undercover agent to try and defuse his plans. The introduction worked, and ALHAGGAGI met the
 11 undercover, who was posing as an al-Qaeda-affiliated bombmaker, several times to finalize his attack
 12 plans. However, ALHAGGAGI proved too savvy, and cut off contact after suspecting that the
 13 undercover agent was, in fact, just that.

14 That close call with law enforcement did not, however, deter ALHAGGAGI. After spurning the
 15 undercover, ALHAGGAGI appears to have spent the better part of his days online, having no real job to
 16 speak of, subsisting on the proceeds of identity theft and drug dealing. Nor did his obsession with ISIL
 17 wane. To the contrary, he merely shifted his means of supporting the terrorist organization from the
 18 physical world to the virtual world, becoming skilled at navigating and communicating on encrypted
 19 messaging applications that were, at the time, ISIL’s communication platform of choice.² Among other
 20 things, ALHAGGAGI opened social media accounts and email accounts at the request of and on behalf
 21 of encrypted messaging application users whom he believed, and who actually were, real-life members
 22 of ISIL. Meanwhile, ALHAGGAGI continued to contemplate conducting a real-world attack, seeking
 23

24 ¹ Exhibit 1 at pgs. 51 and 55.

25 ² See, e.g., “The ‘App of Choice’ for Jihadists: ISIS Seizes on Internet Tool to Promote Terror”;
 26 by Joby Warrick, Washington Post, Dec. 23, 2016, last accessed November 28, 2018 at
 27 https://www.washingtonpost.com/world/national-security/the-app-of-choice-for-jihadists-isis-seizes-on-internet-tool-to-promote-terror/2016/12/23/a8c348c0-c861-11e6-85b5-76616a33048d_story.html?utm_term=.360a6c0f5d18 (noting that “[w]hen the Islamic State was seeking
 28 volunteers for a killing rampage in Europe, it sent word over its favorite” encrypted messaging
 application.”)

1 to replace the undercover's supposed bombmaking expertise with his own, accessing an ISIL-produced
 2 bomb-making manual that he obtained online, and searching online for information on bomb-making
 3 materials like igniters and accelerators.

4 Nor did ALHAGGAGI's twisted visions of causing mass death and destruction stop after his
 5 arrest. To the contrary, while in custody on identity theft charges, but before being charged with
 6 terrorism offenses, the defendant engaged in some deeply troubling activity, according to two fellow
 7 inmates, including hatching a new plot for a bomb attack.

8 Below the government describes in detail the nature of the defendant's conduct. For all of the
 9 reasons discussed herein, the government calculates the sentencing guidelines at offense level 38 and
 10 Criminal History Category VI, and recommends a mid-range sentence of 396 months, followed by life
 11 on supervised release, a low-end fine of \$50,000, restitution in the amount of \$5,273.10, forfeiture, and a
 12 special assessment of \$400.

13 **II. FACTS**

14 1. ALHAGGAGI Makes Threats Online To Conduct Terrorist Attacks Around the San 15 Francisco Bay Area In The Name of ISIL

16 On July 19, 2016, ALHAGGAGI, who at that point was unknown to law enforcement, had a
 17 conversation in a private channel on an encrypted messaging application. The channel was entitled
 18 "Against The War Coalition." Also participating in this private channel was an individual using the
 19 name Abu 'Ali. Abu 'Ali claimed to be in Libya but had access to Kalashnikovs and hand grenades in
 20 Turkey, and claimed to be in a position to help those wanting to travel through Turkey to Syria to join
 21 ISIL there and fight with them. ALHAGGAGI posted that he was interested in obtaining weapons from
 22 Abu 'Ali.

23 Unbeknownst to ALHAGGAGI, also participating in this private channel was an individual who
 24 was acting as a source for the Federal Bureau of Investigation (herein, the FBI Source). On July 21,
 25 2016, having seen ALHAGGAGI express an interest in Abu 'Ali's weapons, the FBI Source, at the
 26 instruction of his/her FBI handlers, directly contacted ALHAGGAGI, referencing Abu 'Ali to start the
 27 conversation. The full conversation between the defendant and the FBI source is attached as sealed
 28

Exhibit 1 to this sentencing memorandum, as it may contain information tending to reveal the identity of the FBI Source. However, in sum, the FBI source opened the conversation by saying, “bro, I’m sorry to bother you, but I think we both know someone. Bro abu ali.” The defendant replied, “Oh okay I know who you’re talking about... Yeah, we started talking then he just stopped messaging me... the brother with the AK’s and hand grenades, right?” The FBI Source replied, “That is bad [referring to the fact that Abu ‘Ali stopped messaging]. *Inshallah* [God willing]³ he is okay... lol yea.” The defendant replied, “*Inshallah* [God willing]” then immediately and spontaneously asked the FBI Source, “[b]rother, you need some weapons?” Thus began a series of messages between ALHAGGAGI and the FBI source on encrypted messaging applications about ALHAGGAGI seeking weapons to commit terrorist attacks in the name of ISIL.

Over the course of these communications, during the next several days, from July 21, 2016, to July 25, 2016, ALHAGGAGI revealed his location, and the target of his attacks: the San Francisco Bay Area. Among other things, ALHAGGAGI told the FBI Source that:

- ALHAGGAGI was concerned that Abu ‘Ali may have thought that ALHAGGAGI was an undercover law enforcement agent;
- ALHAGGAGI could supply the FBI Source with weapons, though “no explosives I have no access to that”;
- ALHAGGAGI had a friend who would buy firearms in Las Vegas, register them, report them as stolen, then break them down and ship them via FedEx or UPS to ALHAGGAGI at false addresses;
- ALHAGGAGI would recover the packages by intercepting the FedEx or UPS drivers at the entrance to the false addresses, accept the packages, and reassemble the weapons;⁴
- ALHAGGAGI could provide the FBI Source with 9mm firearms with 100 rounds;
- ALHAGGAGI had “something coming up,” that “*inshallah*, the whole *ummah* [Muslim community] will be surprised for this one”;
- ALHAGGAGI said that he was originally from Yemen, but that he had been in California his whole life;
- ALHAGGAGI had a Samsung Galaxy S6 device, but that he did not want to sync it with his Samsung account because “its full of *dawlah* [ISIL]⁵ stuff,” so he “didn’t want it

³ Throughout this sentencing memorandum, the government will provide translations of Arabic words and phrases used. Such translations will be denoted by the use of brackets. Where entire conversations or communications occurred in Arabic, the government will provide translations of those conversations or communications. Unless otherwise noted, all translations referred to in this sentencing memorandum were produced by trained Arabic-speaking FBI linguists.

⁴ As discussed in further detail below, this modus operandi of shipping goods via FedEx or UPS to false addresses would feature in ALHAGGAGI’s plans later on, both when ALHAGGAGI claimed to have purchased strychnine online to use in terrorist attacks, and when ALHAGGAGI engaged in identity theft to make fraudulent purchases of clothes online. *See, e.g.,* fn. 20, *infra*.

⁵ *Dawlah* is a reference to the designated Foreign Terrorist Organization of the Islamic State of Iraq and al-Sham, which has called itself *ad-Dawlah al-Islamiya f al-Iraq wa-sh-Sham* and *Dawlah al-*

1 attached to anything personal”;

- 2 • ALHAGGAGI could not get grenades, but he had some associates who worked with Mexican cartels whom he was about to go see who might have access to grenades;
- 3 • ALHAGGAGI thought the perfect weapons were “uzis with extendos” as they were “small, automatic,” they held “up to 100 rounds,” and they were “better than trying to hide a huge AK”;
- 4 • ALHAGGAGI had some “mad crazy plans”;
- 5 • ALHAGGAGI had friends in Mexico⁶ with whom he was going to stay with after he was “done”;
- 6 • ALHAGGAGI was working by himself, which meant that he had a “shorter time frame”;
- 7 • ALHAGGAGI said that the “best thing to do is plan everything out and carry Manu [sic] attacks and tactics at once, which would show the enemies that it’s more than gorilla warfare and this is properly organized”;
- 8 • ALHAGGAGI was “down for a *shahhadah* [suicide] operation if it gets down to it, but my goal is to reach *Dawlah* [ISIL]”
- 9 • ALHAGGAGI had “[n]o professional training lol it’s not hard though shooting a gun or aiming well. The whole thing is just planning.”
- 10 • ALHAGGAGI urged the FBI Source to travel to join ISIL with him, adding that he was planning to go to Turkey himself and cross into Syria in a town called Tal Abyad, but changed his plans after hearing “Aladnany’s” speech;⁷
- 11 • ALHAGGAGI provided the FBI Source with a link to a file on a music sharing website containing an audio recording of a speech by now-deceased ISIL spokesman Abu Muhammad al-Adnani;
- 12 • ALHAGGAGI said that rather than travelling to Syria, he was now planning on “just staying here and establishing something,” adding “you kknow [sic] what they say, everyone is gangster untile [sic] it’s time to do gangster shit [emojis];
- 13 • ALHAGGAGI said he would go to Mexico and “stay there to watch the news, if they know who did all the attacks and release photos I’ll stay in Mexico for a while, and if not I’m leaving damn near the next day, it’s just so I could know if I have a green light at the airport”;
- 14 • ALHAGGAGI said “I’m gonna case [sic] millions of dollars worth of damages and *inshallah* [God willing] 100’s of bodies”;
- 15 • ALHAGGAGI invited the FBI Source to join him in any attack, once he set everything up;
- 16 • ALHAGGAGI was planning on using a false credit card to order strychnine online, so that nothing would lead back to him. He said that it was *halal* [permitted under Islamic law] to use false credit cards, and that false credit cards could also be used to provide

17
18
19
20 *Islamiya*. Accordingly, throughout this sentencing memorandum, whenever the defendant uses the word *Dawlah*, the government translates that word as ISIL.

21
22 ⁶ ALHAGGAGI’s repeated references to escaping through Mexico would be of significance later on, when a search of his laptop computer indicated that it had logged onto several wi-fi hotspots located in Tijuana.

23
24 ⁷ An individual named Abu Muhammad al-Adnani was a spokesman for ISIL and has frequently made speeches that have been released to the public on the Internet. On August 18, 2014, the U.S. State Department designated al-Adnani as a Specially Designated Global Terrorist under Executive Order 13224. Al-Adnani was an ISIL spokesperson until he was killed by a coalition airstrike in August of 2016. Among other things, al-Adnani was known for making explicit calls to Muslims around the world to attack Western targets wherever and however they could: “[s]mash his head with a rock, or slaughter him with a knife, or run him over with your car.” See “Senior ISIS Strategist and Spokesman Is Reported Killed in Syria,” *New York Times*, August 30, 2016, by Eric Schmitt and Anne Barnard, available at <https://www.nytimes.com/2016/08/31/world/middleeast/al-adnani-islamic-state-isis-syria.html> (last accessed November 28, 2018)

money for his family after any attacks; he said that he was familiar with and had been engaging in credit card scams since he was in high school, and that he still had his equipment to make false credit cards.⁸ He explained, “Yea to make the cards and checks, I’m trying to make bombs I’m gonna need fund.”

- ALHAGGAGI described at length his plan to mix strychnine with cocaine, and then distribute the cocaine around nightclubs. Specifically, he said he planned to mix 2 grams of strychnine for every gram of cocaine, and that he had been doing a lot of research on the subject, and that only 0.5 grams was necessary, but that he was adding the extra 1.5 grams “just to be sure.”⁹
- ALHAGGAGI said that he was learning how “to make bombs now too,” and that he had been sent some files by “the brothers,” but that they weren’t very detailed, so he was waiting for further instructions;¹⁰
- ALHAGGAGI described a separate plan he had to start a “huge fire” in an area near him, with trees and houses, identifying the area by name as the Berkeley Hills.
- ALHAGGAGI described the numbers of people he thought he could kill with his strychnine/cocaine scheme: “First day I’m pretty sure I could get up to 20 ppl on Halloween¹¹ I could get about 100 or more.. New Years... countless.”

By July 26, 2016, ALHAGGAGI was comfortable enough with the FBI Source that he responded eagerly when the FBI Source suggested an in-person meeting between ALHAGGAGI and the FBI Source’s purported cousin, who was in fact an FBI undercover employee (herein FBI UCE). The FBI Source explained that his “cousin” lived in Salt Lake City, “surrounded by Mormons.” ALHAGGAGI replied, “Aye to be honest, Mormons are kind ppl. They’re like good neighbors and nice hosts.... But I won’t hesitate to kill a Mormon on site *aki* [brother] I’m not confused about thay [sic].” After discussing how Mormons are different from the Amish, who “look like Jews,” the following conversation ensued:

ALHAGGAGI: A lot of fags nowadays

⁸ As described in further detail below, upon searching ALHAGGAGI’s residence, FBI agents recovered numerous false identifications, false credit cards, a credit card embossing machine, and other identity theft-related tools.

⁹ As described in further detail below, when the defendant was arrested, a search of his electronic devices revealed a Powerpoint that he had downloaded, which had apparently been produced by graduate research students in chemistry and discussed the dangers of strychnine. A copy of this Powerpoint is attached as Exhibit 2, and is filed under seal, to protect public safety.

¹⁰ As described in further detail below, a search of the defendant’s electronic devices revealed a detailed bomb-making manual apparently produced by ISIS, including instructions and diagrams on how to make “funnel bombs,” “anti-personnel bombs,” “directional bombs,” and bombs triggered by cellular phones. A copy of this presentation, and an FBI translation, are attached to this sentencing memorandum as Exhibit 3, and is filed under seal, to protect public safety.

¹¹ The defendant’s reference to being able to kill “up to 20 ppl on Halloween” would become of importance later, when the defendant searched on the internet for large public events taking place on Halloween night in October of 2016. See *infra.* at p. 46.

1 FBI Source: Ugh filth man

2 ALHAGGAGI: Yup, garbage, I can't believe ppl are actually giving them so much
3 attention

4 FBI Source: I was so happy about Orlando bro

5 ALHAGGAGI: I live close to San Francisco, thats like the gay capital of the world

6 ALHAGGAGI: I'm gonna handle them right loooool

7 ALHAGGAGI: Me too [emojis]

8 FBI Source: AIDS. Allahs gift to the fags. Lol

9 ALHAGGAGI: Im gonna place a bomb in a gay club

10 FBI Source: That's perfect bro!

11 ALHAGGAGI: *Wallah* [By God] *Aki* [brother] I'm gonna tear the city up

12 FBI Source: You better be careful making it though

13 ALHAGGAGI: The whole bay area is gonna be up in flames

14 The FBI source then said that s/he saw something that reminded him/her of the defendant, and
15 sent a hyperlink to a TV news report of the 1991 fires in the Oakland Hills. After opening the hyperlink,
16 the defendant replied, "Yup, that's my city lol." The following exchange then occurred:

17 ALHAGGAGI: My ideas are genius lmaoooooooo

18 ALHAGGAGI: Dud o can't wait

19 ALHAGGAGI: They still haven't sent me the files though... still waiting on the brothers¹²

20 FBI Source: You gonna do the same thing or what?

21 ALHAGGAGI: Boiiiiiii I'm I!!!!

22 ALHAGGAGI: *Wallah* [By God] my aim it to get 10,000 ppl

23 FBI Source: Lol I have no idea what that means

24 ALHAGGAGI: That's a confirmation ahhaah

25
26
27 ¹² This was apparently a reference to ALHAGGAGI's desire to get further clarifications to the
28 bomb-making manual that ALHAGGAGI had received from "the brothers." As described in further
detail below, a search of ALHAGGAGI's computer revealed that he had in fact obtained a bomb-
making manual produced by ISIL. See *infra.* at p. 45

FBI Source: Woah!

ALHAGGAGI: Go hard or go home!

ALHAGGAGI: *Inshallah* [God willing]

FBI Source: Lol how you gonna do that bro?

FBI Source: I mean... I know you will get a bunch but that's a lot bro lol

ALHAGGAGI: I'm hitting up China Town, down towns, main streets, mission Blvd every club and underground club in the City

ALHAGGAGI: I know, I'll probably get near the 500 but my goal is 10,000

ALHAGGAGI: Areas here are very crowded

ALHAGGAGI: There's a lot of traffic everywhere

FBI Source: That's awesome bro

ALHAGGAGI: Uhhhh *wallah* [by God] I can't wait.

ALHAGGAGI then told the FBI Source that he had applied for a job with an unidentified police department earlier that week, and that if he was unable to make bombs, he would simply steal weapons from the police once he was employed there. ALHAGGAGI told the FBI Source "I'm gonna redefine terror."

Later that same day, July 26, 2016, ALHAGGAGI and the FBI source communicated again, this time about the FBI source's "cousin," i.e. the FBI UCE. The FBI source, in an effort to strengthen the FBI UCE's bona fides, said that his/her cousin hated the "*kuffar* [non-believers of Islam] and that he was "all about the *Dawlah* [ISIL]. After further discussing the FBI UCE's supposed background, the following conversation ensued:

ALHAGGAGI: Bro, what if we get enough ppl and just go all out!

FBI Source: Anyway bro... [T]hat's what I was thinking!

ALHAGGAGI: So you think that would be better than working as lone wolfs

FBI Source: Well I was gonna ask if you're cool with us tagging along to your plans lol

FBI Source: Or if you think I should stay here and try something...

ALHAGGAGI: Well of course.

ALHAGGAGI: It's all up to you if we have more ppl that means we could cover more

1 areas in one place and create more damage.

2 FBI Source: [The FBI UCE] wants to go to *Dawla* [ISIL] but only if he survives
3 whatever we got planned lol

4 ALHAGGAGI: That my plan as well

5 FBI Source: And I think I'm the same bro

6 ALHAGGAGI: If I make it alive I'm going out there

7 FBI Source: Take us out some *kuffar* [non-believers of Islam]... Get some good
8 brides... go join the bros... *Alhamdulillah* [praise God]!

9 ALHAGGAGI: Lmao sounds like a plan ami [sic]

10 The conversation between ALHAGGAGI and the FBI Source continued. ALHAGGAGI asked
11 if the FBI Source was scared, and whether they were going to go "all out." The FBI Source said s/he
12 was worried about his/her mother, and whether they could leave cash behind. ALHAGGAGI replied
13 "I've had that though too... But I don't know if I'll be able to, buying the bullets guns and bomb
14 equipment plus plane ticket is gonna cost me a lot." ALHAGGAGI again mentioned that he had been in
15 touch with "the brothers," and "took pictures for them,"¹³ apparently to convince them that he had
16 actually cased possible attack locations. ALHAGGAGI then proposed the idea of robbing an armored
17 car, so that he would have more money to leave behind for his family after conducting attacks, and
18 asked whether the FBI UCE could get a job as an armored truck driver. The defendant then asked about
19 the FBI Source's timeframe; the FBI Source replied that s/he did not know, that they should take their
20 time, but try to move kind of quickly. The following exchange then occurred:

21 FBI Source: Okay so how many things can we actually do with like the three of us?

22 ALHAGGAGI: Ummm that the thing, I don't know how long I need to get the explosive
23 stuff because I don't know what is required.

24 FBI Source: Let's not rush it then. What kind of things did the bros say they needed
25 the pics for?

26 ALHAGGAGI: Just the areas that I'm targeting and a video of me making *bayya* [oath of
27 allegiance].

28 ¹³ FBI agents, who by this time had identified ALHAGGAGI as a possible suspect based on various clues he had given about his location, followed him on July 27, 2016, and observed him taking pictures of various locations in downtown Oakland with high foot traffic, including the Oakland Marriott City Center, and entrances to the Oakland City Center/12th Street BART Station.

1 The conversation continued as ALHAGGAGI identified some of the targets he was planning on
 2 attacking. The defendant reiterated that the “clubs” were one of his “main targets”, and that he knew
 3 some bouncers who could get him in, commenting “[t]hat’s where ppl gather... I could get like 100
 4 eash... Easy.” ALHAGGAGI further explained that his plan was not to shoot, but to plant bombs,
 5 because “if we shoot there will be no way out... but bombs!phsss... They can’t even trace us.”
 6 ALHAGGAGI then discussed the Boston Marathon bombers, and how the suspects in that case were
 7 eventually apprehended. ALHAGGAGI discussed the possibility of obtaining false passports, telling the
 8 FBI Source that those were approximately \$200 each.¹⁴ The following exchange then occurred:

9 ALHAGGAGI: Ah do you_ think I should kill my *kufdar* [no translation; possibly
 10 misspelling of *kuffar*, meaning nonbelievers of Islam] "friends"?

11 ALHAGGAGI: That's like sending an all out statement saying that no one is safe

12 FBI Source: How would you do that though?

13 ALHAGGAGI: Ill just call them over and tie them up and execute them. But do you
 14 think it's a wise idea?

15 FBI Source: That would definitely be a statement lol

16 ALHAGGAGI: Aight we could do that

17 FBI Source: Maybe save that for last lol

18 ALHAGGAGI: It'll be funny *wallah* [by God]

19 ALHAGGAGI: But yes for last like you said

20 FBI Source: I am excited bro

21 ALHAGGAGI: Hahahahahahahahah it'll be a good run

22 ALHAGGAGI: *Inshallah* [God willing] when we go to *al-Dawlah* [ISIL] well be laughing
 about it

23 FBI Source: Lol for sure bro

24 FBI Source: Are the guys you talking to now from *Dawla* [ISIL]?

25 ALHAGGAGI: No, I’m gonna talk to them tomorrow after I finish taking the pictures
 26

27 ¹⁴ As discussed in further detail below, agents recovered materials from ALHAGGAGI’s laptop
 28 computer indicating that he had in fact looked on the so-called “dark web” for information on
 purchasing fake passports. See *infra.* at p. 47

1 FBI Source: Like will they accept us in after we get there or will it just be us finishing
2 our own way in

3 ALHAGGAGI: What do you mean accept us in

4 FBI Source: There is another guy I know through a friend of mine who is *Dawlah*
5 [ISIL] but in Afghanistan

6 ALHAGGAGI: Oh and yes they are from *dawlah* [ISIL].

7 On July 27, 2016, the defendant described his planned strychnine attacks in more detail.
8 Specifically, ALHAGGAGI sent the FBI Source screenshots showing that ALHAGGAGI had been on
9 the website Alibaba.com, chatting online with an unknown vendor of chemicals, posing as someone
10 working “in the Berkeley Labs in California... experimenting with this poison.” Later, when the FBI
11 Source asked how much ALHAGGAGI had spent to purchase strychnine, ALHAGGAGI said “450 a
12 kilo.” When the FBI Source mused that that was money ALHAGGAGI had spent well, ALHAGGAGI
13 said “you mean she spent?” and sent the FBI Source a photograph of a California identification card and
14 Wells Fargo debit card, both bearing the name and identification of Victim #1, an actual person whose
15 identity ALHAGGAGI had apparently stolen. The FBI Source commented that “I can just imagine the
16 cops breaking down her door too after its all done lolol.” ALHAGGAGI replied, “LMFAOOO
17 AHAHAHAHAHHAHHAHAHAHAHA YOU GOT MW DYING HERE... I ordered it to this
18 random address, too... Ahahah...Just wait in front of that house till the ups driver comes.” As described
19 in further detail below, while agents never recovered any strychnine, they did uncover evidence that
20 ALHAGGAGI had used Victim #1’s debit card to make fraudulent purchases of clothes online.

21 On July 28, 2016, ALHAGGAGI communicated with the FBI Source again, and provided the
22 FBI Source with his telephone number, (***) ***-8288, so that the FBI Source could pass the number to
23 the FBI UCE. Later, on July 29, 2016, ALHAGGAGI told the FBI Source that after conducting attacks
24 in the United State, he wanted to go to Dubai, in the United Arab Emirates, to conduct attacks there,
25 because “it’s [sic] seems that they are too happy *aki* [brother], I don’t mind dying there either. It’s close
26 enough for me.” The FBI Source asked, “Wait Who is too happy?” The defendant replied, “Ppl in
27 Dubai... They gotta feel the wrath of the Caliphate¹⁵.” The FBI Source commented “I haven’t seen

28 ¹⁵ This appears to be a reference to ISIL, which claimed to have established a caliphate in the
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1 anything from *Dawlah* [ISIL] or anyone about victories there have you?” The defendant replied, “Not at
 2 all it’ll be a first and very (as we say in Oakland) fly.” He continued, “Man o found my purpose in life
 3 [emojis].”

4 2. The FBI Identifies ALHAGGAGI As The Man Planning ISIL Terrorist Attacks in the Bay Area

5 From the moment that ALHAGGAGI first started speaking with the FBI Source online, FBI
 6 agents scrambled to try and confirm his true identity. Among other things, agents knew that two of the
 7 online handles, or usernames, that the defendant was using on encrypted messaging applications were
 8 “Qaswra” and “bucc66.” While the companies providing those encrypted messaging applications were
 9 generally outside U.S. jurisdiction, agents identified a Twitter account that had similar account
 10 identifiers, “@bucc660,” with a screen name of “Qaswarah al-Azdi.” Working their way backwards
 11 from information provided by Twitter about that particular account, agents were able to determine it had
 12 been opened at an I.P. address associated with a Metro PCS cell phone store in Berkeley, California.

13 Agents then queried the Berkeley Police Department, and learned that that particular Metro PCS
 14 store had been the site of an assault a few months earlier, during which investigating officers
 15 interviewed store employees and wrote a report. Suspecting that the person who opened the Twitter
 16 account at that Metro PCS store was probably an employee, FBI agents cross-referenced the list of
 17 employees identified in the police report with particular information that they had learned about the
 18 defendant from his online communications with the FBI Source (specifically, that he was in his 20s,
 19 lived in the Berkeley Hills, had recently applied for a job with a local police department, and could pass
 20 off as being Latino). As a result, they were able to narrow their list of suspects down to two names:
 21 ALHAGGAGI, and another individual who was the younger sibling of the owner of the Metro PCS
 22 Store.

23 At approximately the same time, agents learned from the Oakland Police Department that the
 24 defendant had recently submitted an online employment interest form, using his true name, Amer
 25 ALHAGGAGI. This was consistent with ALHAGGAGI’s statements online to the FBI Source that he
 26 had recently applied for a job with a local police department so that he could have access to weapons to

27
 28 territory then under its control.

1 later use in a terrorist attack. The telephone number provided on the online employment interest form
 2 was the same (***)-***-8288 number that ALHAGGAGI had previously asked the FBI Source to pass
 3 to the FBI UCE.

4 Final confirmation of ALHAGGAGI's identity came a few days later, on July 29, 2016. That
 5 day, the FBI Source had arranged for his/her "cousin," the FBI UCE, to have an in-person meeting with
 6 the defendant in Oakland. When the agreed-upon time for the face-to-face meeting in Oakland came, it
 7 was ALHAGGAGI who stepped forward to introduce himself to the FBI UCE.

8 9 3. ALHAGGAGI Meets the FBI UCE On July 29, 2016, To Further His Attack Plans

10 After introducing themselves to each other, the FBI UCE and ALHAGGAGI got into the FBI
 11 UCE's car, and drove a short distance to a nearby parking lot.¹⁶ After some small talk, the FBI UCE
 12 explained to ALHAGGAGI that he had learned how to handle explosives while working with al-Qaeda
 13 in Afghanistan. If one is to believe the anticipated defense theory that ALHAGGAGI was simply a
 14 foolish boy with an overactive imagination, then this pivotal moment should have been, by any
 15 reasonable stretch of the imagination, the moment when he realized he was in over his head, and stepped
 16 out of the car. But he did not. Instead, he stayed in the car and engaged with the FBI UCE, because the
 17 FBI UCE apparently offered the one thing that ALHAGGAGI sorely needed to carry out his plans:
 18 experience making bombs. ALHAGGAGI turned to the FBI UCE and calmly explained his motivation
 19 for conducting attacks in the San Francisco Bay Area. Specifically, he told the FBI UCE that he
 20 originally planned on just traveling to Turkey to cross into Syria through a town called Tal Abyad to join
 21 ISIL, but that after talking with some unknown individuals in ISIL they told ALHAGGAGI that it was
 22 very difficult to enter Syria at that time, and they recommended ALHAGGAGI to "do something here,
 23 in the United States":

24 FBI UCE: So how long have you been thinking about this, brother?

25 ALHAGGAGI: So um, so um, I just got back from Saudi Arabia about before *Ramadan* so
 26 that's a month and a half ago, right?

27 ¹⁶ The meeting in the car was recorded on video. Portions of that video are attached to this
 28 sentencing memorandum as Exhibit 4. Should the Court wish to view the video in its entirety, the
 government will provide the Court with a copy.

1 FBI UCE: Okay.

2 ALHAGGAGI: My plan was to get back here and uhh immediately [UI] so uhh what I did
3 is I had opened up a phone shop on Ashby right close by here and I sold
4 the business and it was my sister's wedding, so I spent a lot of money on
5 my sister's wedding and everything. And uhh you know, I went with my
6 mom and came back here and I was getting ready to leave immediately
7 like right after *Ramadan* I was supposed to be gone. I got in contact with
8 some of the brothers and uhh trying to make my way to Asia, but like I
9 was trying to get some information about Tal Abyad, Tal Abyad is a town
10 borderline between Turkey and *Dawlah* [ISIL].

11 FBI UCE: Okay.

12 ALHAGGAGI: And see if they are in control of that town. Apparently, they were not.¹⁷
13 And they said it would be very difficult for me to enter at this time. And
14 they recommended me to do something here, in the United States, and I
15 didn't mind 'cause my plan you know eventually I wanted to do
16 something here before I leave.

17 FBI UCE: Right.

18 ALHAGGAGI: But now I guess I'll just do it and I talked to [the FBI Source] yesterday
19 and he said, we were talking about after doing it here going to Dubai or
20 going to *Dawlah* [ISIL], either or. But I've been, I've always been always
21 wanted to do something here.

22 FBI UCE: So some brother told you to do something here? Somebody, do you know
23 this person?

24 ALHAGGAGI: From *Dawlah* [ISIL], I got I got in contact with him through plenty of
25 people. To reach him I had to contact 3 or 4 different people and we've
26 been talk I've been looking for some file, they are supposed to send me
27 some files on how to create a [UI] bombs. And they wanted me to, they
28 asked me to take pictures here of the areas that I'm targeting¹⁸ and they
29 wanted a video of me making *bayya* [oath of allegiance]. And they said

30 ¹⁷ This description from ALHAGGAGI was in fact remarkably accurate. Tal Abyad is a town on
31 the Turkish-Syrian border that was at the time well-known as a crossing point for foreign fighters
32 seeking to join ISIS in Syria. *See, e.g.*, "The Americans: 15 Who Left the United States to Join ISIS,"
33 by Richard Engel, Ben Plessner, Tracy Connor, and Jon Schuppe, available at
34 [https://www.nbcnews.com/storyline/isis-uncovered/americans-15-who-left-united-states-join-isis-](https://www.nbcnews.com/storyline/isis-uncovered/americans-15-who-left-united-states-join-isis-n573611)
35 [n573611](https://www.nbcnews.com/storyline/isis-uncovered/americans-15-who-left-united-states-join-isis-n573611) (last accessed December 2, 2018) (describing several Americans who crossed through Tal
36 Abyad to join ISIS, based on information confirmed by government counterterrorism experts).
37 Consistent with ALHAGGAGI's description, ISIS controlled Tal Abyad until the summer of 2015,
38 when they were defeated by Kurdish forces. The government has been unable to determine the identity
39 of the "brothers" with whom ALHAGGAGI was allegedly speaking about Tal Abyad, but have no
40 information to suggest that such individuals were government undercover agents. In other words, if
41 ALHAGGAGI did actually have a conversation with "the brothers" about being unable to cross through
42 Tal Abyad, and being instructed instead to "do something here in the United States" he was likely
43 talking to actual ISIS members.

44 ¹⁸ Recall that on July 27, 2016, agents conducting surveillance observed ALHAGGAGI taking
45 pictures of high foot traffic areas in downtown Oakland. *See* fn. 13, *supra*.

1 after that we could move forward.

2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]

17 [REDACTED]⁹ In the meantime, while sitting in the FBI UCE's car,
 18 ALHAGGAGI was apparently deeply interested in the FBI UCE's supposed experience building bombs
 19 on behalf of al-Qaeda in Afghanistan:

20 ALHAGGAGI: How, how effective are the bombs you can make?

21 FBI UCE: It's as good as anything. I mean it's like a real bomb. Like, like the first
 22 brother in, do you know, remember when he tried to blow up the Twin
 23 Towers the first time? He used a U-Haul and that's what he did. He did our
 24 trick. He would get the, the, the products from Home Depot separate the
 25 ammonium nitrate and put them in barrels and he would make, it took him
 26 a long time to do it, but he was patient and he was good, he was smart and
 little by little he made barrels, barrels, barrels, barrels, he put them on the
 U-Haul truck and then he drove them to the New York and he detonated it.
 So it could be as big as that! How big we want to make it, is up to us,
 because we just, the bigger we want it the...

27 ¹⁹ This portion of the Government's sentencing memorandum is redacted from the public docket
 28 to protect law enforcement methods and techniques. An unredacted version has been filed with the
 Court and provided to the defense.

1 ALHAGGAGI: The more, okay [nodding head].

2 FBI UCE: ...longer it takes. It takes more time to buy the product separate it, mix it,
3 store it, buy the product mix it, store it.

4 ALHAGGAGI: Okay.

5 FBI UCE: Yeah and, we never, like the way I do it, I never mix the product or store
6 the product in the same place that I live.

7 ALHAGGAGI: Oh yeah, of course [nodding head].

8 ALHAGGAGI then described for the FBI UCE his plan to lace cocaine with strychnine.

9 Consistent with the scheme that he had described earlier for the FBI Source online, ALHAGGAGI told
10 the FBI UCE that he had ordered the strychnine on a Chinese website, after looking for it first on the
11 dark web, and had it shipped to a fake address via UPS, using a false credit card:

12 FBI UCE: I know that my cousin told me you ordered some stuff.

13 ALHAGGAGI: Yeah, strychnine.

14 FBI UCE: Is it coming to your address?

15 ALHAGGAGI: No, it's not coming to my address. It's coming to a different address.

16 FBI UCE: Okay?

17 ALHAGGAGI: But um

18 FBI UCE: And when you get it what are you going to do with it? Like?

19 ALHAGGAGI: Well, we were thinking about either selling it as drugs or mixing it in
20 drugs.

21 FBI UCE: Yeah, what kind of drugs?

22 ALHAGGAGI: Cocaine, because it's the same color as cocaine.

23 FBI UCE: Yeah ok, so it's like a white powder?

24 ALHAGGAGI: Yeah.

25 FBI UCE: Then what would you do with it? Like, after you mix it.

26 ALHAGGAGI: We, we distribute it.

27 FBI UCE: Do you know who you ... like ...

28 ALHAGGAGI: Yeah.

1 FBI UCE: Would you try to sell it yourself? Or ...

2 ALHAGGAGI: I know a lot of distributors. I could sell it myself too, but I wouldn't do

3 that.

4 FBI UCE: You wouldn't distribute it?

5 ALHAGGAGI: Yeah.

6 FBI UCE: Okay, so you ordered the poison?

7 ALHAGGAGI: Uh huh.

8 FBI UCE: But do you have the cocaine now? How do...

9 ALHAGGAGI: Yeah, I can get the cocaine, any day.

10 FBI UCE: Like you know somebody who can supply to you? Like how much will

11 that cost us?

12 ALHAGGAGI: It will be \$6,000 for a quarter brick.

13 FBI UCE: \$6,000.00 dollars?

14 ALHAGGAGI: Yeah.

15 FBI UCE: Wow! Okay. I mean I can ask the brothers to help us with the money....

16 ...

17 FBI UCE: So, when is this stuff going to arrive? Do you know when it's going to be

18 here?

19 ALHAGGAGI: I ordered it like 2 days ago. It should be here in one week. It's coming

20 from China.

21 FBI UCE: From China? How did you order it?

22 ALHAGGAGI: Ali Baba.

23 FBI UCE: Can you could do that?

24 ALHAGGAGI: Yeah.

25 FBI UCE: [Laughs] That's pretty good. [Laughs]

26 ALHAGGAGI: Yeah, it's easy. I was, I was looking for it online, I couldn't find it, I was

27 thinking about going to Silk Road, the deep web. Are you familiar with

28 that?

FBI UCE: Yeah, I know about that.

ALHAGGAGI: But, I found it on Ali Baba.

FBI UCE: Okay.

1 ALHAGGAGI: And I used the stolen credit card to order, so ...

2 FBI UCE: That's smart, see, you're thinking.

3 ALHAGGAGI: Yeah.

4 FBI UCE: So, you are thinking, okay. So you used a stolen credit card and you said

5 it's not coming your house.

6 ALHAGGAGI: Not coming to my house.

7 FBI UCE: Okay, how are they shipping it, like the regular postal service?

8 ALHAGGAGI: UPS.

9 FBI UCE: Are you sure it's UPS?

10 ALHAGGAGI: Yep.

11 FBI UCE: Because UPS is good about putting the box there and walking away.

12 ALHAGGAGI: Yeah.

13 ...

14 FBI UCE: Okay. Please make sure you pick it up, right? [Laughs]

15 ALHAGGAGI: Yeah, of course. I've done, I've done this a lot of times. Like ordering

16 stuff from online and picking it up from different places. UPS drivers,

17 they don't care, as long as you tell them the name on the package they

18 give it to you. I'm not worried about that.²⁰

19 ALHAGGAGI then described for the FBI UCE his plan to light fires in the Berkeley Hills area:

20 FBI UCE: Anything else you think that you wanna do, because we could stuff or we

21 have to plan it. It takes...

22 ALHAGGAGI: Okay.

23 FBI UCE: ...it takes time.

24 ALHAGGAGI: And there's umm, have you've been, you familiar with the Berkeley Hills?

25 Have you seen them before?

26 FBI UCE: No I mean, just on the map and driving around. Like, I use to come here a

27 long time ago with my mom, she used to have like a cousin here or

28 something, so I would visit for a couple of days. So, I know where

29 somethings are, like I know there are like the hills here, but I don't know if

30 they are the Berkeley Hills or Oakland Hills or what.

²⁰ This, of course, was consistent with ALHAGGAGI's claims online to the FBI Source that he had experience shipping packages to false addresses via UPS, and that he had bought strychnine on a Chinese website using a false credit card and address.

1 ALHAGGAGI: I was just thinking about burning the hills, cuz there's a lot of trees and a
2 lot of homes over there.

3 FBI UCE: Right?

4 ALHAGGAGI: [UI] make a, start a fire.

5 FBI UCE: How would, how would you start the fire?

6 ALHAGGAGI: I was just thinking gasoline.

7 FBI UCE: Oh, gasoline. Oh, they might be able to catch you with that, because they
8 know, that... gasoline and like a match? How would you get away? Right,
you have to think how we'd get away.

9 ALHAGGAGI: Because there's not a lot of people that go up to the hills, some areas of it.

10 FBI UCE: Ok so you do it...

11 ALHAGGAGI: And we can just drive and do it real quick and drive away, smoothly.
There's a lot of ins and outs to it too, a lot of roads.

12 FBI UCE: You're thinking of a some place a little more like ...

13 ALHAGGAGI: Yeah.

14 FBI UCE: ... not a lot of people go there.

15 ALHAGGAGI: Uhhuh.

16 FBI UCE: Like a little hidden area

17 ALHAGGAGI: Yeah.

18 FBI UCE: Start the fire, then?

19 ALHAGGAGI: And then it will spread.

20 FBI UCE: Okay, yeah, that's possible...

21 ALHAGGAGI added, "there's also designated areas in the [UI], so the fire could spread to
22 where the community is. You want to go check out the hills?" The FBI UCE agreed, and they drove
23 out of the parking lot towards the Berkeley Hills. What followed was a guided tour, directed and
24 narrated by ALHAGGAGI, of the Berkeley Hills, with ALHAGGAGI pointing out along the way to the
25 FBI UCE all of the places ALHAGGAGI wanted to attack. During the drive, among other things,
26 ALHAGGAGI stated:

- He had a place in Mexico where he could stay after conducting attacks in the Bay Area,
and before leaving for Syria to join *Dawlah* [ISIL];

- 1 • He had a fake driver's license that he could use to rent a storage locker to store materials used to prepare his attacks;²¹
- 2
- 3 • He showed the FBI UCE the fake credit card that he said he used to purchase the strychnine (this was the same credit card that ALHAGGAGI had earlier sent a
- 4 photograph of to the FBI Source online);
- 5 • He had the "hook-ups" for a lot of illegal stuff in Oakland, and that he could obtain guns, but not bombs, which was why he contacted "the brothers" online;
- 6
- 7 • He had contacts that he grew up with from whom he could get weapons, including a Glock .40 with 100 rounds, and AK semi-automatic rifles;
- 8
- 9 • Oakland was a "cool" place to operate from, because the police were so distracted by so many crimes, that ALHAGGAGI and the FBI UCE would catch them by surprise.

10 While driving towards the hills through the UC Berkeley campus, ALHAGGAGI commented,
 11 "we could, I was thinking about targeting the dorms.... Uh, I'll show you, you'll see right now. Yeah,
 12 they are in one location... yeah, it's like a big apartment complex... yeah, there are several of them like
 13 right next to each other, crowded." The FBI UCE replied, "there's a lot of young students, boy."
 14 ALHAGGAGI replied, grinning, "yeah. *I'd like to kill the students*" (emphasis added). The FBI UCE
 15 said "yeah, they're all just young little Americans who are... they think... they are better than everyone
 16 else." ALHAGGAGI laughed, and discussed how the dorms and other UC Berkeley buildings had very
 17 little security that would interfere with them.

18 After identifying some areas in Oakland and Berkeley where ALHAGGAGI could purchase
 19 cocaine, ALHAGGAGI commented, "I got it all covered." The FBI UCE replied, "Wow, we could
 20 actually do this and get away... man, it would just drive them crazy they couldn't get us."
 21 ALHAGGAGI replied,

22 I know, I've been so excited about it. I've been hyped up. Like, how I'm
 23 seeing it, we could get away so easily. And like if you want to plant a bomb
 24 and walk into a place with a bomb, you don't even have to do it yourself.
 25 There are so many homeless people here that would do it for you, for like a
 26 dollar or something. Like I could tell them to walk into the YMCA with a
 bag and they'll do it and we could detonate it from outside.

27 ²¹ As described in further detail below, upon arresting ALHAGGAGI in November of 2016 and
 28 searching his residence, agents recovered a California driver's license bearing ALHAGGAGI's
 photograph, but bearing the name of a different person. See pg. 47

Continuing through Berkeley towards the Oakland Hills, ALHAGGAGI pointed out several bars and clubs “where all the students are.” ALHAGGAGI commented, “it’s a nice area to attack... it’s like, everybody’s in their own world, just doing their thing.” ALHAGGAGI also told the FBI UCE that there were even more crowded areas in San Francisco that could make for good targets. Specifically, he said “it’s not hard to target places, because there’s people everywhere. But I was trying to target, you know, like clubs, you know, like dance clubs, bars... stuff like that... to avoid Muslims, I guess.”

Upon arriving in the hills, the FBI UCE commented, “there is a lot of trees.” ALHAGGAGI replied, “this is nothing, this is nothing here. When we go up you will see better places that we can burn and the fire can just like expand all over the place.” One place in particular that ALHAGGAGI pointed out was the entrance to Tilden Park, noting in particular that it was a park for kids. ALHAGGAGI and the FBI UCE then contemplated the best way to start a fire in the Berkeley Hills, settling on the idea of

[REDACTED]

After chastising hikers, golfers, bikers, and other individuals they saw on their drive using the Berkeley Hills for recreational purposes, ALHAGGAGI said the following: “It’s a Friday. The weather is nice today. So they’re taking advantage of this. I want to make it to the point where every American here like thinks twice or three times before he leaves his home. Like, is it necessary for me to leave right now?... like that’s how I want them to be.... ‘Is it safe for me? Is today anything going to happen?’ You know?” The FBI UCE agreed. ALHAGGAGI continued, “That’s the goal. *Inshallah*, I’m sure all of the burning, the explosives, the poisons, all of that adds up, to a conclusion, you know?”

On the way back down from the Berkeley Hills, ALHAGGAGI again pointed out the UC Berkeley dorms as a likely target of his. “There’s four buildings, one, two, three, there’s six right here, just in this square, in this block.” ALHAGGAGI reiterated to the FBI UCE that at most, building security would consist of a “retarded white kid walking around, and he won’t be a problem.” The FBI UCE commented that people wouldn’t notice an extra backpack since it was a college area;

²² This portion of the Government’s sentencing memorandum is redacted from the public docket for public safety reasons. An unredacted version has been filed with the Court and provided to the defense.

1 ALHAGGAGI agreed, noting that he already had several backpacks that could be used to plant bombs.
 2 ALHAGGAGI also suggested that garbage bins could be used to plant bombs, and that such bins were
 3 always on the street in the mornings in crowded areas such as San Francisco's Chinatown.
 4 ALHAGGAGI speculated that the bombs could be triggered by cell phones, and told the FBI UCE that
 5 he had access to telephones that could be subscribed in false names, including his own, which he said
 6 was subscribed in the name of David L*****.²³

7 4. ALHAGGAGI Begins To Suspect the FBI UCE is Not Really a Bombmaker

8 On the drive back to Oakland, ALHAGGAGI started questioning the FBI UCE about his
 9 background. This was the beginning of a vetting process for ALHAGGAGI, where he tested the FBI
 10 UCE to see if perhaps the FBI UCE was not all that he claimed to be. For starters, the FBI UCE had
 11 represented to ALHAGGAGI that he was a member of al-Qaeda, not a member of ISIL. ALHAGGAGI
 12 began by asking pointed questions of the FBI UCE about al-Qaeda, about its relationship with the
 13 Taliban, and about the fact that the Taliban had relationship with other countries, such as Iran.²⁴ Then,
 14 ALHAGGAGI brought up the name Anwar al-Awlaki, the deceased American-born al-Qaeda recruiter,
 15 and suggested out of the blue to the FBI UCE that al-Awlaki had been killed by an FBI informant.²⁵

16 ALHAGGAGI: So. You know how Anwar al-Awlaki... you know Anwar al-Awlaki?

17 FBI UCE: Yeah, of course!

18 ALHAGGAGI: So kinda how he died was crazy. It was a guy that [UI] that was with him,
 19 that was somewhat like his, his right hand man, for years and years and
 years and *he was working for the FBI* [looking directly at FBI UCE].

20 FBI UCE: For the Americans!?

22 ²³ This is in fact true; ALHAGGAGI's phone is subscribed in this name. The name appears to be
 the name of a real individual.

23 ²⁴ The fact that ALHAGGAGI specifically questioned the FBI UCE about the Taliban's
 24 relationship with Iran was particularly telling. As described in further detail below, ALHAGGAGI has a
 particular disdain for Shiite Muslims, who make up the vast majority of the population in Iran. *See* CIA
 25 World Factbook entry for Iran, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ir.html>, noting that Iran is approximately 90-95% Shi'a (last accessed December 3, 2018)

26 ²⁵ Anwar al-Awlaki was a leading lecturer and recruiter for al-Qaeda. In part through recorded
 27 audio lectures, al-Awlaki inspired and/or made contact with several individuals who committed acts of
 terrorism in the United States. He died in a coalition drone strike in Yemen. Even after his death in
 28 September 2011, al-Awlaki continues to serve as an inspiration for individuals to provide material
 support to various foreign terrorist organizations.

1 ALHAGGAGI: Yep. He memorized some of the Quran, you know some of the *hadith*
2 [quotes of words spoken by the prophet of Islam]. He was just always
3 with Anwar al-Awlaki. Anwar al-Awlaki was a good friend of my uncle in
4 Yemen. So he was, he was coming to our house I used, I used to see him.

5 FBI UCE: Why would they, why would this brother turn him in?

6 ALHAGGAGI: He was, he was an American originally. But he was a convert.

7 The FBI UCE managed to redirect the conversation by musing that converts to Islam were inherently
8 untrustworthy. But for ALHAGGAGI, the vetting into the FBI UCE's bona fides had only just started.

9 ALHAGGAGI's next challenge came a few moments later:

10 ALHAGGAGI: So what do you think of the *Khilafah* [Caliphate] and the establishment of
11 the *Khilafah* [Caliphate] and Baghdadi, you know?

12 FBI UCE: I don't know many, I just think the government there is so corrupt, man.

13 ALHAGGAGI: In ahh, Iraq and Syria?

14 Again, the FBI UCE managed to redirect the conversation by talking about how Afghanistan was deeply
15 corrupt, and controlled by the Americans. But in doing so, the FBI UCE made left a clue that further
16 raised ALHAGGAGI's suspicions – he praised Iran. “The only country that really tells America, you
17 can't do anything here is Iran. There are no American soldiers in Iran, there's no American base in Iran.
18 That's why America hates Iran. They can't control what they do,” said the FBI UCE. This was
19 unwittingly a mistake on the part of the FBI UCE, because Iran is a predominantly Shiite Muslim
20 country, and, unbeknownst to the FBI UCE at the time, ALHAGGAGI held a particular disdain for
21 Shiite Muslims. *See, e.g.*, Docket No. 77, Application for Permission to Enter Plea of Guilty, at pg. 12
22 (ALHAGGAGI admits that he “engaged in the trolling behavior of falsely reporting users who had
23 blocked him on [encrypted messaging applications] as Shiites, in the hopes that Sunni ISIL sympathizers
24 would in turn block these users).

25 Unfortunately, the FBI UCE dug an even deeper hole for himself on Iran a few moments later,
26 when ALHAGGAGI asked him directly whether Shiite Muslims should be excommunicated:

27 ALHAGGAGI: Do we make *takfir* [act of calling out other Muslims as heretics] upon the
28 Shi'a?

FBI UCE: I don't know, man. Some, yeah, like some Sheikhs that I know say
they're Muslim, and then there's some Sheiks who say no, they're worse
than *kufr* [non-believers].

1 ALHAGGAGI: They're worse than *kufr* [non-believers]?

2 FBI UCE: Yeah, it's ... it depends on who you listen to, man and who you read. I say
3 anybody who's fighting the Americans is okay. If they're fighting and
4 killing Americans, they may not be Muslim, but I'm not gonna fight you
5 until you decide to fight us....so Iran is the only country that if they get
nuclear, they get nuclear power, then we, we as Muslims, will have a real
authority to tell America, 'Don't mess with us or we're gonna nuke Israel.
Don't mess with us or we're gonna nuke one of your European allies.'"

6 Praising Iran so forcefully and contemplating being allies with Shiite Muslims was, unbeknownst to the
7 FBI UCE, a critical misstep that raised ALHAGGAGI's suspicions. But ALHAGGAGI had yet one
8 more challenge to test the FBI UCE's bona fides. Again, the FBI UCE's initial response was
9 undoubtedly a red flag for ALHAGGAGI:

10 ALHAGGAGI: Uh, what do you think of Ayman al-Zawahri?

11 FBI UCE: *Who?* (emphasis added)

12 ALHAGGAGI: Ayman al-Zawahri?

13 [pause]

14 ALHAGGAGI: He's the leader of al-Qaeda.

15 [pause]

16 Again, the quick-thinking FBI UCE tried valiantly to recover, by suggesting that he did not understand
17 the name al-Zawahri because ALHAGGAGI was using an Arabic pronunciation, whereas the FBI UCE
18 was used to hearing the name with a different pronunciation. But the damage had already been done.
19 ALHAGGAGI had been alerted – an al-Qaeda operative who did not immediately recognize the name of
20 al-Qaeda's highest leader after the death of Osama bin Laden might not be an al-Qaeda operative at all.

21 5. ALHAGGAGI Engages in Identity Theft

22 At the time that the above-described meetings and communications were taking place, FBI
23 agents had been maintaining round-the-clock physical surveillance on ALHAGGAGI, in an effort to
24 intercept any incoming packages of strychnine or other dangerous materials that ALHAGGAGI might
25 use to conduct any attacks. While they never intercepted any strychnine, on August 2, 2016, they did
26 recover a package containing approximately \$4,000 worth of high-end clothes that ALHAGGAGI had
27 ordered online from a clothes-shopping service in Illinois to a fake, non-existent address in Oakland a
28

few doors down from ALHAGGAGI's home, using the name and credit card of another individual. The name of the individual ALHAGGAGI used was the name of Victim #1, the same individual whose debit card and California identification ALHAGGAGI had messaged previously to the FBI Source, claiming to have used it to purchase strychnine. See pg. 10, *supra*. Documents provided by the clothing company and by the bank issuing the card to pay for said clothes indicated that ALHAGGAGI had in fact used Victim #1's stolen credit card number to pay for the clothes.

6. Despite His Suspicions, ALHAGGAGI Meets the FBI UCE Again on August 6, 2016

Despite his suspicions about the FBI UCE's bona fides, ALHAGGAGI agreed to meet the FBI UCE again, perhaps because the FBI UCE claimed to possess the one thing that ALHAGGAGI did not have, and had eagerly been trying to obtain from "the brothers": bomb-making know-how.

Accordingly, when the FBI UCE messaged ALHAGGAGI about possibly meeting on August 6, ALHAGGAGI eagerly agreed, so long as the meeting could take place after his firearms training class.²⁶ ALHAGGAGI showed up at the prearranged meeting spot in Oakland, and got into the FBI UCE's car. Immediately after exchanging pleasantries, ALHAGGAGI showed the FBI UCE a 9 millimeter firearm that he was carrying with him.²⁷ The firearm appeared to be the same firearm that on August 3, 2016, ALHAGGAGI had previously shown photos of to the FBI Source online. See Exhibit 1 at Bates US-007733.

The purpose of the August 6 meeting was for ALHAGGAGI and the FBI UCE to visit a storage locker that the FBI UCE had rented in another city in the Bay Area, in which they were going to store all of their attack-related materials. On the way to the storage locker, among other things:

- ALHAGGAGI boasted that he had been busy obtaining cocaine for his strychnine-laced attack;

²⁶ Agents conducting 24x7 physical surveillance were aware that as part of ALHAGGAGI's ruse to join the Oakland Police Department, he had been taking firearms training classes. ALHAGGAGI reiterated to the FBI UCE in the car that he was taking these classes and applying to a police department for a job "so that he would have access to more stuff," meaning weapons to use in a future terrorist attack. On the morning of August 6, agents observed ALHAGGAGI attend some type of security training session sponsored by The Loss Prevention Group in Oakland. Subsequently, on August 25, 2016, agents observed ALHAGGAGI visiting a gun range. According to the trainer at that range, ALHAGGAGI shot well and appeared to have some experience in handling firearms.

²⁷ Of note, despite having searched ALHAGGAGI's residence after arresting him on November 28, 2016, agents did not recover this firearm.

- 1 • ALHAGGAGI used stolen credit cards to take Uber trips;
- 2 • ALHAGGAGI confirmed that he had been planning on joining a police department
- 3 because, before meeting the FBI UCE, he thought he would have a difficult time
- 4 obtaining weapons, and figured that he would have access to such weapons if he was a
- 5 policeman;
- 6 • ALHAGGAGI surmised that he would be above suspicion if he joined a police
- 7 department, because the Bay Area was a “liberal” place and people did not want to be
- 8 thought of as racists. The FBI UCE commented that ALHAGGAGI “knew how to work
- 9 the system, man.” ALHAGGAGI agreed;
- 10 • ALHAGGAGI explained that for the nightclubs he was planning on attacking, he knew a
- 11 friend who could help him get past security so that he would not be searched. “So we
- 12 could get a bomb in there for sure,” ALHAGGAGI told the FBI UCE. ALHAGGAGI
- 13 said that he didn’t mind if his friend died in any ensuing attack, because his friend was
- 14 not Muslim;
- 15 • ALHAGGAGI said that the previous weekend he and the FBI UCE had missed an
- 16 opportunity, because it had been a very crowded weekend in San Francisco and Oakland.
- 17 “Man, San Francisco’s gonna [sound of ALHAGGAGI smacking his lips] so good man.
- 18 It’s like, one bomb is gonna take care of fifty people, sixty people.” ALHAGGAGI
- 19 mused that he wouldn’t even need to get inside any nightclubs to kill people, because
- 20 people generally lined up outside of nightclubs, making for a good target;
- 21 • ALHAGGAGI further speculated that AT&T Park could be another possible attack
- 22 location, because it was “always crowded”;
- 23 • ALHAGGAGI asked the undercover how much damage a car bomb could cause, as
- 24 opposed to a backpack bomb;
- 25 • ALHAGGAGI told the FBI UCE he could get access to a stolen car for the FBI UCE to
- 26 construct a car bomb, and that he could get this car from Sacramento or some other
- 27 location, so that it would be harder trace. “We’re going to do this so low-key like don’t
- 28 worry about anything tracing back to you or me or anybody,” ALHAGGAGI promised;
- ALHAGGAGI told the FBI UCE that the FBI UCE could leave after the bomb attacks,
- but that ALHAGGAGI had further plans he wanted to engage in. In particular, he
- described for the FBI UCE a plan whereby he would set up a fake modeling agency and
- advertise for women to come to the agency for modeling interviews, and then kill them.
- ALHAGGAGI clarified, “‘cause, I want to do several different types of killing. I wanna,
- like, do the explosives, kill ‘em with guns, probably like slaughter them with knives”;
- The FBI UCE suggested that such plans were possible, but that it was safer to use bombs
- with cell phone detonators, because that offered the best opportunity to get away.
- ALHAGGAGI asked the FBI UCE for details as to how cell phone detonators worked.
- After hearing the FBI UCE’s explanation, ALHAGGAGI noted that they would have to
- be careful of closed circuit surveillance cameras to avoid detection;
- The FBI UCE started talking about how he needed to obtain supplies to build bombs.
- Without being prompted, and without missing a beat, ALHAGGAGI offered, “you want
- me to get it?” The FBI UCE agreed, and suggested [REDACTED];²⁸

1 Upon arriving at the storage locker, the FBI UCE and ALHAGGAGI drove into a storage facility
 2 and inspected a unit that the FBI UCE had purportedly rented so that they could store their attack-related
 3 supplies there.²⁹ After looking around the unit, ALHAGGAGI again spontaneously offered, “just write
 4 me a list of what I need to bring and I’ll bring it. I’ll drop it off here.”

5 On the drive back to Oakland, the FBI UCE offered that he and ALHAGGAGI could make their
 6 *bayat* [oath of allegiance] video in the storage locker. Again, though, the FBI UCE inadvertently
 7 dropped a clue that he may not be all that he seemed, mispronouncing the word *bayat*. When
 8 ALHAGGAGI asked him to repeat the word, the FBI UCE suggested that maybe he was using a
 9 different pronunciation rather than an Arabic one. Also on the drive back to Oakland:

- 10 • ALHAGGAGI joked that if they got stopped by law enforcement for making a wrong
 11 turn, they could just kill the police officer who stopped them;
- 12 • The FBI UCE asked ALHAGGAGI to clarify his plan and where he wanted to put
 13 bombs. ALHAGGAGI specified, “the car is like, one of, the, since you know how to do
 14 that, we definitely need to do the car one. That, that’s gonna create a lot of damage, and
 15 a lot of people are gonna get hurt. That’s going to be in the heart of San Francisco, like
 16 in the downtown area.”
- 17 • ALHAGGAGI then specified that as to the backpack bombs, he was thinking about
 18 “spreading them everywhere.... It could be like one night, I go out and I just spread all of
 19 ‘em from, you know, in the areas, that we would target. And the next morning we wake
 20 up ‘cause, or, in some areas, we’re gonna have to hit them in the morning some other
 21 areas at night, like San Francisco, we’re gonna have to hit the nightclubs at night,
 22 obviously, the bars.... Uh, Oakland, we’re gonna need to hit some places up in the
 23 morning, like Chinatown, downtown, ‘cause that’s when it’s most busy, like you see a
 24 hundred people at one place over there... yeah, it’s real busy. So much foot traffic you
 25 can’t believe it. But yeah, so basically, if we’re gonna hit up, like the place’s were gonna
 26 hit up in the morning, I’m gonna set the place, set the bombs at night. And we detonate it
 27 the next day, like, in the morning around 10:00, 11:00, something like that.”
- 28 • ALHAGGAGI continued, “then we detonate them from far away. Uh, yeah.... And just
 29 imagine, like ten different locations or fifteen different locations, BOOM! BOOM!
 30 BOOM!... Dude! [laughing]”
- 31 • ALHAGGAGI speculated, “[t]he city... the whole state would shut down. Homeland
 32 Security’s gonna come, the FBI, everybody’s going to come.” After the FBI UCE agreed

33
 34
 35
 36 This footnote to the Government’s sentencing memorandum is redacted from
 37 the public docket to protect law enforcement methods and techniques. An unredacted version has been
 38 filed with the Court and provided to the defense.

39 ²⁹ Unbeknownst to ALHAGGAGI, the storage locker in question had been wired beforehand
 40 with video and audio surveillance.

1 that “They won’t know what hit ‘em because it’s so different, different places, not just
2 one,” ALHAGGAGI said, “all over the place. Yep, we’re gonna hit every downtown,
3 we’re gonna, man, I’m tellin’ you, it’s gonna be big. It’s gonna be the biggest attack
4 [laughing] in America since Pearl Harbor!”

- 5 • ALHAGGAGI asked the FBI UCE for further details about the capabilities of a car
6 bomb. “The car we’re definitely gonna do that. That’s like the main one. That’s gonna
7 be like in the heart of San Francisco... park it, and walk away. And if it could... could it
8 bring down a concrete building?” The FBI UCE said that it could. ALHAGGAGI
9 continued “Okay, because if it could bring down a concrete building, there’s huge
10 buildings.”
- 11 • ALHAGGAGI speculated that his downtown San Francisco attack could be even more
12 devastating if the FBI UCE were able to build two separate car bombs.
- 13 • ALHAGGAGI speculated that the Boston Marathon bombers didn’t plan well enough,
14 because they didn’t have enough time to escape. “The dude was found in a boat,”
15 ALHAGGAGI commented.
- 16 • ALHAGGAGI said that he specifically wanted to be in the vicinity of the bombs when
17 they detonated, because he wanted to see them detonate. “I don’t wanna go all the way to
18 San Diego and then, then detonate from San Diego, because I want to be here when it
19 detonates because I want to see it detonate.”
- 20 • ALHAGGAGI said it would be even cooler if they planted “a couple bombs here and
21 there,” and then “you know, in target areas, and then we, we’d, you know, the route that
22 the firefighters and emergency, we plant bombs on their routes.” ALHAGGAGI
23 retreated from this plan, though, after the FBI UCE suggested that they might need more
24 people to carry out such coordinated attacks.
- 25 • ALHAGGAGI suggested arming themselves with automatic weapons, just in case they
26 were surrounded by law enforcement.

27 Towards the end of the drive back to Oakland, ALHAGGAGI took a call on his cell phone.
28 During the call, ALHAGGAGI was apparently negotiating a drug deal, asking the caller “did they have
it? Did they have it? How much? How much?” Later in the call, ALHAGGAGI asked the caller,
“how far is Ukiah?” and “did you ask him about the white?” [UI] Okay, when we get there, we talk to
them.” After arriving in Oakland and getting out of the FBI UCE’s car, FBI agents maintained
surveillance on ALHAGGAGI, as they had done around the clock since initially identifying him. The
following day, surveillance agents observed ALHAGGAGI drive to Ukiah and meet with unknown
individuals. Based on subsequent statements that ALHAGGAGI made to the FBI UCE, and based on a
review of ALHAGGAGI’s text messages, it appears that ALHAGGAGI was in fact engaging in some
kind of drug deal in Ukiah.

7. ALHAGGAGI Openly Suspects The FBI UCE Of Being With Law Enforcement

On August 9, 2016, ALHAGGAGI reconnected with the FBI Source, i.e., the online contact who initially introduced ALHAGGAGI to the FBI UCE. After apologizing to the FBI Source for being out of contact, ALHAGGAGI sent the source the following emoji text message, which appears to be a “thumbs up” draped in the flag of ISIL:



ALHAGGAGI then confided in the FBI Source:

ALHAGGAGI: ay ima tell you something but don't tell [the FBI UCE] okay!! [emojis]

FBI Source: Lol uh oh! what is it? Haha

ALHAGGAGI: I had the sense that he was an informant when we first met

FBI Source: Hahah... Why? I won't tell him bro but he would probably laugh lol... he wanted to meet you in person to make sure YOU weren't a spy! Lolololol

ALHAGGAGI: Cuz he told me he worked for alqaeda... I was like damn he probably got caught and now trying to catch ppl

FBI Source: Lol bro [the FBI UCE] is so paranoid lolol but that's why he never got caught I think

ALHAGGAGI did not respond to the FBI Source's explanation for why the FBI UCE “never got caught.”

What unfolded over the next several hours was a remarkably sophisticated effort by ALHAGGAGI to test the FBI UCE's bona fides once and for all. One method that criminals commonly employ to “smoke out” undercovers is to put the suspected law enforcement officer into a situation where he or she has no choice but to stop a crime from taking place, knowing that a true law enforcement officer would not allow said crime to occur. *See, e.g., United States v. Chow*, 14-CR-0196-

CRB, Trial Tr. Vol. 8, pg. 1292-93, Testimony of FBI UCE-4599, November 17, 2015.³⁰ Along these lines, on August 10, seemingly out of nowhere, ALHAGGAGI sent the following message to the FBI Source, indicating that he was imminently about to engage in an act of violence:

I'm about to go beat someone's ass later on today for talking crazy
he's gonna have like 5grand on him so ima take that from him, then
ima split it with my boy for setting him up for me

The FBI Source did exactly what s/he was supposed to do: dissuade ALHAGGAGI from engaging in any violence. But ALHAGGAGI continued: "[t]his dummy is coming to the ghetto ain't not police there and I know everyone there so I could just hide in any random house... I just need the money and they some *kuffar* [non-Muslims]... I think it's *halal* [permitted under Islamic law]. Alarmed that ALHAGGAGI was about to engage in violence with an unknown individual, agents tasked the FBI Source with trying to find out more information. After several hours, when the FBI Source failed to get any further details from ALHAGGAGI, agents hurriedly replaced their surveillance team with a fully capable FBI SWAT team to follow ALHAGGAGI and interdict in the event he attempted to engage in any violent acts. Fortunately, the swift-thinking FBI UCE, having been advised of the communications that the FBI Source had just had with ALHAGGAGI, and knowing that the FBI could not allow any violent acts to occur on its watch, quickly called ALHAGGAGI to ask for an urgent in-person meeting.

ALHAGGAGI accepted, and the two met in person, briefly, in Oakland, in the FBI UCE's car. The FBI UCE made up a story on the spot explaining that reason for the urgent meeting was

[REDACTED]

³⁰ There, as the Court may recall, at trial an FBI undercover agent described how he was in a hotel room in Las Vegas with an organized crime target, when the target put a gun and a line of cocaine on the hotel coffee table, and invited the FBI undercover agent to test the cocaine with him:

AUSA: What was going on here in terms of [the target] talking to you about the quality of product? What was he trying to get you to do?

FBI UCE: He's challenging me. He wants to see me do cocaine because cops do not do cocaine. Cops do not take drugs.

AUSA: During the course of this interaction, did you snort the cocaine?

FBI UCE. No, sir.

AUSA: All right. And were you trying to convince him that you didn't need to snort the cocaine?

FBI UCE. Oh, yes, sir.

SENTENCING MEMORANDUM
CR-17-0387-1 CRB

1 [REDACTED]³¹ Then, the following
 2 conversation ensued, a conversation that perhaps ALHAGGAGI had been expecting since the very first
 3 moment he began to suspect the FBI UCE was not all that he seemed:

4 FBI UCE: Uh. That will help with the supplies and I'll start working it this weekend
 5 and hopefully, we, I should be done with everything! I think, instead of the
 6 10 days.

6 ALHAGGAGI: [UI] Okay.

7 FBI UCE: So in 2 weeks we should go do whatever we wanna do bro! But the thing
 8 that really made me nervous was uhh, when my cousin called me and said
 9 uhh, he thought that for some reason I was gonna help you with this uh,
 10 this deal tonight.

10 ALHAGGAGI: What deal?

11 FBI UCE: You, you were gonna go, and you were gonna go possibly umm, jack
 12 someone up and take his money!? Or take his ...

12 ALHAGGAGI: I was just gonna beat his ass because he was talking mess! I wasn't
 13 planning on taking his stuff

13 FBI UCE: Okay.

14 [phone ringing – ALHAGGAGI answers a call]

15 ALHAGGAGI: Excuse me for a second.... Hello, yeah who [UI] Oh yeah what's up!? [UI]
 16 Ok hold on, I'm gonna come right now to talk to you! Alright. Umm. [UI]

17 FBI UCE: You said this [UI]

18 ALHAGGAGI: I'm gonna go take care of him, that's it!

19 FBI UCE: [whispers] You can't do that, bro!

20 ALHAGGAGI: I can't beat him up?

21 FBI UCE: Nooooooo.

22 ALHAGGAGI: It's going to be way deep in the hood. No one is even going to know about
 23 it!

24 FBI UCE: You can't, you can't...

25 ALHAGGAGI: You don't want me to beat...

26 [REDACTED]
 27 This
 28 portion of the Government's sentencing memorandum and the accompanying footnote 31 are redacted
 from the public docket to protect law enforcement methods and techniques. An unredacted version has
 been filed with the Court and provided to the defense.

1 FBI UCE: No. It makes me very nervous.

2 ALHAGGAGI: [UI]? Don't worry, don't worry about it!

3 FBI UCE: No, it makes me nervous honestly because what I don't want happening is,

4 you beat this guy up, right? And then some cop is driving by, right? Just

5 chance, he sees you guys fighting he's gonna pull you over and he's going

6 to arrest you. What's going to happen he's gonna arrest both of you for

7 fighting, right?

8 ALHAGGAGI: Yeah.

9 FBI UCE: How is that going to help you with the plan?

10 ALHAGGAGI: [UI]

11 FBI UCE: How is, that's, that's gonna mess everything up!

12 ALHAGGAGI: Don't worry about it.

13 FBI UCE: Right? [UI] gonna get your [UI] telephone numbers, your drivers license,

14 and he's gonna put you, take your fingerprints and he's gonna do all of

15 that!

16 ALHAGGAGI: Yeah.

17 FBI UCE: That's gonna mess everyting up!

18 ALHAGGAGI: [UI]

19 FBI UCE: Between now and our operation you gotta ...

20 ALHAGGAGI: Low key.

21 FBI UCE: You gotta promise me, man.

22 ALHAGGAGI: Under the radar. [UI] it's good.

23 FBI UCE: Brother, no, not even drug deals!

24 ALHAGGAGI: [UI] Okay.

25 FBI UCE: No, I'm very serious bro!

26 ALHAGGAGI: [UI] don't worry about it.

27 FBI UCE: Please, no drug deals! No gun deals! Nothing, right? Nothing that can

28 get you in trouble. The only time I may ask you to ahh, because you said

we should have a couple of guns on the day of, so maybe I will say, hey,

man, can you get us a couple of, you know. I don't know how you do it, I

don't know if you have the bros that can do it.

ALHAGGAGI: [UI]

1 FBI UCE: Maybe a couple of guns the day we're going to do it. Maybe a couple of
2 days before. Just in case we're driving over there and something happens,
but until then you have to promise me brother...

3 ALHAGGAGI: *Inshallah* [God willing] don't worry about it!

4 FBI UCE: No drug deals! No more going wherever you went to [laughs] you went to
5 north or something?

6 ALHAGGAGI: I went to uh, uh, Humboldt.

7 FBI UCE: Where is, where is Humboldt?

8 ALHAGGAGI: It's like, near Oregon.

9 FBI UCE: What did you do way up there, man?

10 ALHAGGAGI: [UI][laughs] that's what she wants, that's what it is.

11

12 FBI UCE: I don't wanna be arrested here, man. I don't mind dying in Afghanistan, I
13 don't mind dying in Saud, Saudi, I don't mind that, but I don't want to get
arrested here.

14 ALHAGGAGI: [UI] Don't worry about it.

15 FBI UCE: So please, nothing that can get us in trouble.

16 ALHAGGAGI: Yeah.

17 FBI UCE: Even if you're hanging around some punk who's gonna get you in trouble,
18 that's gonna get you and me in trouble, right? If that guy gets arrested,
you're with him, and they be like, you come and then they are going to
19 find me and arrest me. And we didn't even, we didn't even do like the
operation and we got arrested! And that's embarrassing man.

20 ALHAGGAGI: Of course, I got you man.

21

22 ALHAGGAGI: It's all good. I would spend more time with you, but I got a lot on my
23 schedule today. I'll see you, I'll see you soon *inshallah* [God willing].

24 FBI UCE: So you're not gonna rip somebody!? Or beat somebody up!? [Laughing]

25 ALHAGGAGI: No, no I just gotta go back to the Oasis they were calling me right now,
26 something went down. Uh, just regular conflict and nothing like legal,
illegal.

27 FBI UCE: Nothing that will get you arrested!?

28 ALHAGGAGI: Nah, nah [UI] ok it's cool see you soon.

1 FBI UCE: Ok [UI] see you soon thank you bro!

2 ALHAGGAGI then stepped out of the FBI UCE's vehicle. The FBI SWAT team maintained watch on
3 ALHAGGAGI; once it appeared that ALHAGGAGI had retired for the evening, a regular surveillance
4 team relieved them. Any acts of violence that ALHAGGAGI may have been contemplating inflicting
5 on others had apparently been averted by the quick-thinking FBI UCE. However, the hastily-planned
6 meeting with ALHAGGAGI came with great cost to the investigation – though there would a few
7 subsequent communications, and even one more in-person meeting, from this point forward,
8 ALHAGGAGI started to distance himself both from the FBI UCE and his “cousin,” the FBI Source.

9
10 8. ALHAGGAGI Meets With the FBI UCE One Last Time, On August 14, 2016

11 Shortly after the hastily-planned August 10 meeting, the FBI UCE sent ALHAGGAGI a “list” of
12 supplies for ALHAGGAGI to obtain to help build car bombs. Agents conducting surveillance on
13 ALHAGGAGI did not observe him making any purchases consistent with the list. The defense will
14 undoubtedly characterize this failure as evidence that ALHAGGAGI never intended to carry out any
15 bombing attacks in San Francisco, and that he started distancing himself from the FBI UCE once he
16 began to believe the FBI UCE was actually a bombmaker. The reality, though, is the exact opposite.
17 ALHAGGAGI began to distance himself from the FBI UCE once he began to (correctly) believe that the
18 FBI UCE was not a bombmaker, and was in fact law enforcement agent.

19 Nevertheless, ALHAGGAGI and the FBI UCE met on one more occasion, on August 14, 2016.
20 This was the last time that the FBI UCE would be able to successfully arrange a meeting with
21 ALHAGGAGI. The supposed purpose of the meeting was for ALHAGGAGI and the FBI UCE to visit
22 the storage locker again. ALHAGGAGI brought with him a backpack, which he said could be used to
23 construct a backpack bomb, of the type that he and the FBI UCE had described earlier while driving
24 through UC Berkeley. Regrettably, the recording device in the FBI UCE's vehicle malfunctioned and
25 picked up mostly audio from the car's engine. However, had this matter gone to trial, the FBI UCE
26 would have testified that during the meeting, ALHAGGAGI advised that his “brother” in Fremont had
27 additional backpacks that they could use, and that this “brother” also had the strychnine that
28

1 ALHAGGAGI was planning on mixing with cocaine. ALHAGGAGI offered to get the poison, the
2 backpacks, and additional supplies in the next few days and put them into the storage locker.
3 ALHAGGAGI proposed August 31, 2016, as a possible date for their coordinated attacks. In addition,
4 ALHAGGAGI clarified how his plan was to park a car bomb in front of an unidentified gay nightclub
5 on Market Street in San Francisco, and then place backpack bombs in additional locations in the East
6 Bay. Upon arriving at the storage locker, the FBI UCE showed ALHAGGAGI several barrels
7 containing mock explosives, to which ALHAGGAGI responded with amazement and excitement.³²
8 Upon returning to Oakland, ALHAGGAGI and the FBI UCE drove through downtown Oakland and
9 Chinatown. While driving through Chinatown, ALHAGGAGI commented about how busy the
10 neighborhood could get. While stopped at a traffic light, ALHAGGAGI pointed out a particular street
11 corner and asked the FBI UCE, “how many people could one backpack get?” The FBI UCE replied,
12 usually 20 or 40 people. ALHAGGAGI smiled. ALHAGGAGI pointed out several planter boxes in
13 front of a building in downtown Oakland as a particularly ideal place to plant a backpack bomb.
14 ALHAGGAGI asked whether it would cause more damage if he planted backpack bombs inside a metal
15 garbage can, as opposed to a plastic planter box. ALHAGGAGI asked the FBI UCE how many people
16 died during the 9/11 attacks; the FBI UCE responded approximately 3,000 people. ALHAGGAGI
17 responded that he wanted to try to match that death toll with his attacks.

18 Also during this meeting, ALHAGGAGI asked the FBI UCE several pointed questions about the
19 details of carrying out an attack. In particular, ALHAGGAGI asked whether the FBI UCE had
20 conducted similar attacks in Afghanistan, and whether he had any experience planning getaways from
21 attacks like the one ALHAGGAGI was contemplating. These questions were yet another attempt by
22 ALHAGGAGI to vet the FBI UCE’s bona fides. If the FBI UCE’s responses were too vague and
23 generalized for ALHAGGAGI’s comfort, ALHAGGAGI would decide, as he ultimately did, that the
24 risk of being in contact with law enforcement far outweighed the potential reward of the FBI UCE
25 actually being the bombmaker he claimed to be.

26
27
28 ³² This brief portion of the meeting that occurred in the storage locker was captured on video and
audio, on equipment separate from the recording equipment in the FBI UCE’s vehicle.

1 9. ALHAGGAGI Tests The FBI UCE One Last Time, Then Cuts Off Contact

2 ALHAGGAGI's final test for the FBI UCE occurred a few days later, on August 19, 2016. That
3 day, the FBI UCE contacted ALHAGGAGI on an encrypted messaging application and asked if
4 ALHAGGAGI wanted to meet in Oakland again so that they could visit the storage locker again. This
5 time, instead of agreeing, ALHAGGAGI turned the tables on the FBI UCE, and said that he had to take
6 his grandmother to a hospital in another city in California. The city that ALHAGGAGI mentioned was
7 the very same city that the FBI UCE had suggested was his own residence. Accordingly, ALHAGGAGI
8 offered to meet the FBI UCE there, and, as an added bonus, told the FBI UCE that he had obtained
9 everything they needed to conduct ALHAGGAGI's attacks. This was not true; agents conducting
10 round-the-clock surveillance on ALHAGGAGI knew that he had not made any purchases of any attack-
11 related supplies. Moreover, agents had never observed ALHAGGAGI visiting any hospitals, nor was
12 there any indication that ALHAGGAGI had a sick grandmother. In other words, ALHAGGAGI's offer
13 was all a ruse, one final test to see if the FBI UCE was amenable to meeting on the FBI UCE's home
14 turf, instead of ALHAGGAGI's. When the FBI UCE declined to do so, ALHAGGAGI's vetting was
15 complete. From that point forward, ALHAGGAGI essentially cut off contact with both the FBI UCE
16 and the FBI Source, believing (correctly) that they were both working for law enforcement.

17 Between August 19, 2016, and September 23, 2016, both the FBI UCE and FBI Source
18 repeatedly attempted to contact ALHAGGAGI. In particular, ALHAGGAGI and the FBI UCE had
19 planned to meet on August 19, 2016, to conduct a "dry run" of their attacks. The FBI UCE attempted to
20 confirm the time and location of the meeting with ALHAGGAGI several times, but received no
21 response. On August 31, 2016, the FBI Source messaged ALHAGGAGI, "Bro, do you work for the
22 government???" ALHAGGAGI replied on September 1, 2016, "I'm back... smh [shaking my head]...
23 The government huh lmao." ALHAGGAGI also messaged the UCE claiming he had obtained, or could
24 obtain, a vehicle for their attacks, and that he had been busy obtaining funds and was in possession of
25 \$150,000. However, agents who were conducting constant physical surveillance on ALHAGGAGI
26 during this time period observed no activity consistent with either of those claims.

27 On September 23, 2016, the FBI UCE approached ALHAGGAGI unannounced on a street in
28

Oakland. The UCE asked ALHAGGAGI if he wanted to meet, and that they could drive somewhere to have a meal. ALHAGGAGI agreed, but said that he needed to pick some things up from his residence first. ALHAGGAGI left and went back to his residence, but did not return to meet the UCE. That was the last time the UCE and ALHAGGAGI communicated with each other.

10. A Search of ALHAGGAGI's Residence and Electronic Devices Reveals The Depth Of His Illegal Activities

One would hope, and the defense will presumably ask this Court to believe, that having had such a close brush with an undercover law enforcement officer, the ordinary person would have been scared straight, and would have immediately abandoned any ideas he may have had of aiding ISIL, or indeed doing anything illegal at all. But ALHAGGAGI was far from ordinary. The full scope of his illegal activities became clear to the government after ALHAGGAGI was arrested on November 29, 2016, on identity theft charges. As part of that arrest, agents obtained a search warrant to search ALHAGGAGI's residence, and all his electronic devices. Below is a description of the most salient items recovered during those searches.

a. *ALHAGGAGI Left A Suicide Note Claiming Responsibility For His Planned Attacks*

During the search of ALHAGGAGI's residence, agents observed ALHAGGAGI's brother remove a camera from the family room coffee table and place it in his backpack. When questioned by agents why he did so, the brother said that he needed the camera for a school project. Agents examined the camera and removed a 64GB microSD card located in the camera. A review of that SD card revealed why ALHAGGAGI, and possibly his brother, might have been eager to keep it from the government. Located on the SD card was a screenshot of a document written in Arabic that described in detail the attacks that ALHAGGAGI had described to the FBI Source and the FBI UCE that he wanted to conduct. A complete translation of the document attached as Exhibit 5 to this sentencing memorandum. An excerpt is pasted below:

The operations are divided into three parts as follow:

1. God permitting, there will be covert and diversion operations the goal of which is to place lethal poison in the drinks of infidels; as I always get invited to large gatherings where the number of people exceed one hundred. Strychnine poison is the substance that is going to be used in this operation, God permitting, it will be slipped into the drinks;

whereby all the attendees would drink from a single dose.

2. As for this operation, it is arson. The site that was chosen is a hilly and fancy t area of the American city of Berkeley in California. The fire would be set during the day, God permitting, when it is hard to detect. I will use gasoline, God permitting. Keep in mind that this area has dense trees and much population, and the houses are made of lumber and they have no iron or cement in their construction.
3. This is a terrorist operation that bears the pure fingerprints of the State. The operation of planting explosive devices in all directions all over the following American cities: Oakland, San Francisco, and Berkeley. The locations were carefully chosen and most of them are [UI] sites and were chosen to avoid Muslims. The explosive devices would either be placed underground, or hidden above ground. Pictures of the sites will be sent in the near future, God permitting.³³ As for now, Google Maps pictures will be sent so the brothers would have a background idea on some of the sites.

As for the final operation, it is only if I were to be exposed and unable to leave the country; if I were surrounded in an area; a direct confrontation with Security; either the police or army, the end will be an explosive belt after the ammunition runs out.

The details of the attacks described in this screenshot were virtually identical to the details that ALHAGGAGI provided to the FBI Source online, and later in person to the FBI UCE. Moreover, the document claimed to be authored by *Abu Harb al-Yamany* [Yemeni father of war]. One of the online monikers that ALHAGGAGI used when interacting with the FBI UCE was *Abu Harb* [father of war].

b. ALHAGGAGI Helped ISIL To Open Social Media and Communications Accounts

Upon ALHAGGAGI's arrest on November 29, 2016, he was interviewed by agents. During this interview, agents asked ALHAGGAGI about his "relationship with the brothers overseas." ALHAGGAGI told agents that it was not really a relationship, but he followed "them" through encrypted messaging applications, and was just curious. He said he found people on encrypted messaging applications by searching for "IS"; agents clarified, "by IS, you mean Islamic State?"

³³ The Court will recall that agents conducting surveillance on ALHAGGAGI on July 27, 2016, observed him taking pictures of high foot traffic areas in downtown Oakland, including the Oakland City Center Marriott, and entrances to the 12th Street/Oakland City Center BART Station. See fn. 8, *supra*.

ALHAGGAGI replied, “yes.” ALHAGGAGI added that he was specifically looking for things on the Islamic State in Syria and Iraq. Agents asked if ALHAGGAGI was worried that IS was a terrorist organization; ALHAGGAGI said he knew they were considered a terrorist organization, but that he wasn’t worried about simply searching for their name on the internet. ALHAGGAGI then claimed that he was just following online chats to get the “real” news from people who were in Syria and Iraq. Agents asked which telephones ALHAGGAGI was using to follow these chats, having seized two cell phones from him upon his arrest, a Samsung Galaxy and a ZTE. ALHAGGAGI identified to agents that the Samsung was the one that he used to communicate on encrypted messaging applications.

In fact, upon searching his telephones, it was the *other* telephone, the ZTE, that ALHAGGAGI used primarily to engage on encrypted messaging applications with members of ISIL. Specifically, from November 14, 2016, to November 17, 2016, ALHAGGAGI had a conversation using the online Arabic handle *barud* [gunpowder] on an encrypted messaging application on the ZTE with an individual named Abu Muharib Iraqi, who identified himself as being affiliated with “the Caliphate.” In this conversation Abu Muharib Iraqi asked *barud*, i.e., ALHAGGAGI to open social media accounts; ALHAGGAGI did so, and volunteered to open email accounts as well to authenticate the social media accounts. The conversation, translated from Arabic by FBI linguists, is pasted below in its entirety:

DATE/TIME (UTC)	FROM	CONTENT
11/14/16 7:09:03 AM	Abu Muharib Iraqi	Greetings.
	Barud	Greetings.
11/14/16 7:12:11 AM	Abu Muharib Iraqi	How are you, my brother?
	Barud	I am well, thank God, Sheikh
	Barud	And how are you?
11/14/16 7:14:54 AM	Abu Muharib Iraqi	I am well, thank God.
11/14/16 7:15:14 AM	Abu Muharib Iraqi	Dear one, <i>munasir-lal-khilafah</i> [supporter of the Caliphate] sent me --
11/14/16 7:15:24 AM	Abu Muharib Iraqi	-- to work
	Barud	Yes, I understand you.
	Barud	Tell me the details
11/14/16 7:17:58 AM	Abu Muharib Iraqi	May God reward you with what is good.
	Barud	And you as well.
11/14/16 7:19:00 AM	Abu Muharib Iraqi	Dear one, the job is to administer a script within which a number of Twitter accounts, maybe 15 or 20, were placed and publish the script. The script will publish these accounts directly.
	Barud	Do you mean you will create 15 to 20 accounts?
	Barud	This [misspelled in original] is the first step.

DATE/TIME (UTC)	FROM	CONTENT
11/14/16 7:20:19 AM	Abu Muharib Iraqi	Not on your own, my brother.
11/14/16 7:20:23 AM	Abu Muharib Iraqi	There are brothers with you.
	Barud	There [or possibly these] are good things.
	Barud	I am ready; and then we will all supervise these accounts.
11/14/16 7:21:15 AM	Abu Muharib Iraqi	May God reward you with what is good.
	Barud	And every time one is deleted, we will create a replacement.
11/14/16 7:21:27 AM	Abu Muharib Iraqi	God bless--
11/14/16 7:21:38 AM	Abu Muharib Iraqi	-- this is the type of energy we want
	Barud	As you wish, Sheikh. I will create the accounts and send [misspelled in original] to you.
11/14/16 7:22:13 AM	Abu Muharib Iraqi	May God reward you with what is good
11/14/16 7:22:19 AM	Abu Muharib Iraqi	Rely on God, my brother
	Barud	And you as well
11/14/16 7:25:28 AM	Abu Muharib Iraqi	https://telegram.me/joinchat/Ccz Z*****baOt9Q
11/14/16 7:25:41 AM	Abu Muharib Iraqi	Access this site, my brother. I will add you to us, God almighty permitting.
	Barud	Sheikh, I am going to create three now and then go to bed; it is midnight here. I will create more tomorrow, God willing. The first is done; two are left.
	Barud	The first is M*****u@gmail.com
		Allahakbar
11/14/16 7:49:14 AM	Abu Muharib Iraqi	Perfect, my brother, take your time.
11/14/16 7:49:31 AM	Abu Muharib Iraqi	Don't rush; we have a lot of accounts for today, praise God --
11/14/16 7:49:48 AM	Abu Muharib Iraqi	-- because we prepared for yesterday's release, and it did not go out [possibly it did not download]
	Barud	The second one: L*****1420@gmail.com
		Allahakbar
11/14/16 8:00:00 AM	Abu Muharib Iraqi	Continue. May God bless you.
	Barud	This is the apple of my eye, the third one: D*****w94702@gmail.com
		Allahakbar
11/14/16 8:03:23 AM	Abu Muharib Iraqi	May God reward you with what is good.
11/14/16 8:03:38 AM	Abu Muharib Iraqi	My brother, give me an accounts identifier, that is a necessity.
	Barud	Right away; give me a minute.
	Barud	We can use them for YouTube, but [misspelled in original] the original password for all three email accounts is Mumiaabujamal
11/14/16 8:05:08 AM	Abu Muharib Iraqi	God bless you.
11/14/16 8:07:54 AM	Abu Muharib Iraqi	For Twitter, dear one, it is <i>gamil</i> [no translation, possibly misspelling of Gmail], there is no need to establish an account
11/14/16 8:08:18 AM	Abu Muharib Iraqi	My brother, in the Twitter app when it asks you for an email--
11/14/16 8:08:24 AM	Abu Muharib Iraqi	--write this --
11/14/16 8:08:50 AM	Abu Muharib Iraqi	-- anything + outlook.com
11/14/16 8:09:00 AM	Abu Muharib Iraqi	Like this for instance

DATE/TIME (UTC)	FROM	CONTENT
11/14/16 8:09:09 AM	Abu Muharib Iraqi	Jdjd7r6hrhdns@outlook.com
11/14/16 8:09:31 AM	Abu Muharib Iraqi	Did you understand, my brother?
	Barud	@AI****ut101 @m****1001 @q****11001
	Barud	Yes, I know Sheikh. But [misspelled in original] when you use this [misspelled in original] method, the account does not last long.
	Barud	It requires authentication.
11/14/16	Abu Muharib Iraqi	You are right
	Barud	I used to write this, for example: Vdusgahaf@gmail.com
	Barud	But sometimes it would ask for authentication--
	Barud	--and close the account.
11/14/16 8:13:39 AM	Abu Muharib Iraqi	You speak true, my brother.
	Barud	Yes, and I can also use the accounts to upload
	Barud	God willing, early tomorrow I will finish some work, and then I will create other accounts. We will stay in touch. Goodbye. Goodnight, my brother.
11/14/16 8:15:10 AM	Abu Muharib Iraqi	May God reward you with what is good.
11/14/16 8:15:19 AM	Abu Muharib Iraqi	Goodbye
	Barud	And you as well.
11/14/16 3:28:31 PM	Abu Muharib Iraqi	@al*****r82
11/14/16 3:28:34 PM	Abu Muharib Iraqi	Greetings
11/14/16 3:28:51 PM	Abu Muharib Iraqi	Talk to this man, my brother, he is in charge.
	Barud	Yes, sir. I am going to prepare the other accounts now.
	Barud	My account is restricted.
	Barud	Nas*****00@gmail.com Allahakbar @nas*****00
	Barud	Ak*****797@gmail.com Allahakbar @do*****tions
	Barud	All of the accounts are authenticated.
11/15/16 5:17:06 AM	Abu Muharib Iraqi	May God reward you with what is good.
	Barud	I will create more, but Google has made it a little difficult for us.
11/15/16 5:18:13 AM	Abu Muharib Iraqi	Just work normally, my brother.
11/15/16 5:18:17 AM	Abu Muharib Iraqi	God bless you.
11/15/16 5:19:52 AM	Abu Muharib Iraqi	Dear one.
11/15/16 5:20:09 AM	Abu Muharib Iraqi	Be energetic, dear one.
11/15/16 5:20:15 AM	Abu Muharib Iraqi	Create regular accounts.
	Barud	Do you mean without authentication?
11/15/16 5:21:39 AM	Abu Muharib Iraqi	Yes, my brother.
11/15/16 5:21:39 AM	Abu Muharib Iraqi	I will send you a script, dear one.
	Barud	But the Tweets won't appear without authentication
11/15/16 5:22:23 AM	Abu Muharib Iraqi	They do appear, my brother
11/15/16 5:22:26 AM	Abu Muharib Iraqi	https://io.*****/1/ admin yf8Ex9IOhn8rFc45w
	Barud	When you Tweet, only you can see it, or followers can.
	Barud	Okay?

DATE/TIME (UTC)	FROM	CONTENT
11/15/16 5:22:33 AM	Abu Muharib Iraqi	This is a script.
11/15/16 5:22:47 AM	Abu Muharib Iraqi	Access it and I will teach it to you.
11/15/16 5:23:12 AM	Abu Muharib Iraqi	Use vpn America, my brother
11/15/16 5:36:28 AM	Abu Muharib Iraqi	Did you try the script, my brother?
	Barud	It did not work
11/15/16 5:46:22 AM	Abu Muharib Iraqi	I don't understand; how did it not work?
	Barud	Access it under name "admin."
	Barud	https://io.*****/1/ Password: admin yf8Ex9IOhn8rFc45w?
11/15/16 5:47:19 AM	Abu Muharib Iraqi	No, my brother
	Barud	Should I access my account?
11/15/16 5:47:37 AM	Abu Muharib Iraqi	yf8Ex9IOhn8rFc45w This is the password.
11/15/16 5:48:18 AM	Abu Muharib Iraqi	https://io.*****/1/ This is the site of the script.
11/15/16 5:48:34 AM	Abu Muharib Iraqi	The username is: Admin
	Barud	Username: admin Password: yf8Ex9IOhn8rFc45w
11/15/16 5:48:45 AM	Abu Muharib Iraqi	Script is a site, my brother, it is not an account on Twitter.
	Barud	Attachments: (root)Root_media_0_Telegram_Telegram Images_720313516_123632.jpg
11/15/16 5:50:00 AM	Abu Muharib Iraqi	You are writing an uppercase A, my brother
11/15/16 5:50:08 AM	Abu Muharib Iraqi	Write it this way: a
	Barud	It is working
11/15/16 5:50:50 AM	Abu Muharib Iraqi	How many accounts are in it, my brother
	Barud	Eight
11/15/16 5:51:13	Abu Muharib Iraqi	Okay, and what are you using? VPN?
	Barud	Cyber ghost
11/15/16 5:51:38 AM	Abu Muharib Iraqi	Good?
11/15/16 5:51:47 AM	Abu Muharib Iraqi	Are you using it on a computer?
	Barud	Yes
11/15/16 5:52:06 AM	Abu Muharib Iraqi	very good.
11/15/16 5:52:16 AM	Abu Muharib Iraqi	So add accounts to the script my brother
	Barud	Okay, I will do that now.
11/15/16 5:52:41 AM	Abu Muharib Iraqi	May God reward you with what is good.
	Barud	The picture is clearer now.
	Barud	How many brothers are participants with us?
11/15/16 5:58:33 AM	Abu Muharib Iraqi	There are three of you [misspelled in original], with me there are four
11/15/16 5:58:42 AM	Abu Muharib Iraqi	Each brother has a script.
11/15/16 5:58:48 AM	Abu Muharib Iraqi	He adds accounts to it.
11/15/16 5:58:55 AM	Abu Muharib Iraqi	And I publish in scripts
	Barud	Do you publish on your own, or do you have someone who helps you?
11/15/16 5:59:26 AM	Abu Muharib Iraqi	I am alone, my brother
	Barud	So it is you and I
	Barud	If you want.

DATE/TIME (UTC)	FROM	CONTENT
11/15/16 6:00:14	Abu Muharib Iraqi	There is no need, my brother. Publishing is on me, you have to maintain 15 Twitter accounts in the script.
11/15/16 6:00:39 AM	Abu Muharib Iraqi	We do not publish anything in the morning, so use the opportunity to add accounts.
	Barud	Excellent.
11/15/16 6:00:53 AM	Abu Muharib Iraqi	I mean that time, because we do not publish
11/15/16 6:01:14 AM	Abu Muharib Iraqi	It is now nine o'clock in the morning here.
	Barud	Okay, I will add five to ten accounts every day.
	Barud	It may be more or less.
11/15/16 6:01:49 AM	Abu Muharib Iraqi	Perfect my brother.
	Barud	Good, God willing. Excuse me now. Goodnight.
	Barud	Goodbye.
11/15/16 6:03:34 AM	Abu Muharib Iraqi	Goodbye.

Later that day, ALHAGGAGI communicated again with someone using the handle Abu Mu7arib Iraqi, which appears to be the same Abu Muharib Iraqi ALHAGGAGI had been communicating with earlier, given the similarities in the name and the continuation of the previous conversation:

DATE/TIME (UTC)	FROM	CONTENT
11/15/16 5:25:35 PM	Abu Mu7arib Iraqi	Greetings
11/15/16 5:25:47 PM	Abu Mu7arib Iraqi	Brother, I am Abu Muharib
11/15/16 6:01:20 PM	Barud	Greetings. Welcome, dear; how are you?
11/15/16 6:01:33 PM	Abu Mu7arib Iraqi	How are you, brother?
11/15/16 6:02:08 PM	Barud	Thank God.
11/15/16 6:02:33 PM	Barud	How are you doing with the script?
11/15/16 6:02:41 PM	Abu Mu7arib Iraqi	Thank God, it is fine.
11/15/16 6:02:41 PM	Abu Mu7arib Iraqi	But, brother, we need accounts.
11/15/16 6:03:12 PM	Barud	Yesterday I uploaded five accounts to the script.
11/15/16 6:03:32 PM	Abu Mu7arib Iraqi	Add the most account numbers you can, brother; God bless you.
11/15/16 6:03:39 PM	Barud	And today, God willing, I will get more.
11/15/16 6:03:42 PM	Abu Mu7arib Iraqi	We have a very big invasion
11/15/16 6:03:49 PM	Abu Mu7arib Iraqi	May God reward you well.
11/15/16 6:03:59 PM	Abu Mu7arib Iraqi	Trust in God and start now.
11/15/16 6:04:10 PM	Barud	God willing. Do not worry; I will start working in half an hour.
11/15/16 6:04:21 PM	Abu Mu7arib Iraqi	God willing.
11/15/16 6:04:27 PM	Abu Mu7arib Iraqi	Your efforts, O precious one.
11/15/16 6:04:42 PM	Abu Mu7arib Iraqi	I thing you read about the invasion that I want, brother.
11/15/16 6:04:53 PM	Barud	No, I did not read about it.
11/15/16 6:05:06 PM	Abu Mu7arib Iraqi	Go to the group, brother, and read.
11/16/16 3:58:08 PM	Abu Mu7arib Iraqi	O dear, add the biggest number of accounts brother.

Agents obtained records from Twitter and Gmail confirming that the accounts referenced in these chats were in fact opened, and that they were opened from IP addresses clearly associated with

1 ALHAGGAGI, such as his home address, or from IP addresses associated with locations that
 2 ALHAGGAGI had been observed visiting by surveillance agents, such as a Starbucks café in Oakland.

3 In addition, agents are aware that an individual using the name Abu Muharib Iraqi was arrested
 4 in Iraq. In September and October of 2017, this individual was interviewed by FBI agents, in the
 5 presence of Iraqi National Security Service officers. The individual, who was at the time 17 years old,
 6 admitted having used the name Abu Muharib to engage in hacking activities for a group called the
 7 United Cyber Caliphate, which the individual explained was a pro-ISIL group that defaced social media
 8 accounts by posting pro-ISIL propaganda. The individual further claimed that he took a *bayat* [oath of
 9 allegiance] to Abu Bakr al-Baghdadi, shortly after ISIL spokesman Muhammad al-Adnani died.³⁴ The
 10 individual further claimed to be an administrator for a group called Ashhad, which was responsible for
 11 creating fake Twitter accounts and using fake email accounts to broadcast ISIL-related propaganda
 12 across as many Twitter feeds as possible. The individual recognized a username, Qaswara, that
 13 ALHAGGAGI used on encrypted messaging applications, and recalled asking Qaswara to help him
 14 open social media accounts.

15 The accounts that ALHAGGAGI opened were in fact used by unknown individuals to post and
 16 repost ISIL-related propaganda from published by an entity called ‘Amaq, which, as described in further
 17 detail below, is a known propaganda distributor for ISIL. Among the propaganda reposted from
 18 ALHAGGAGI’s account was an ‘Amaq infographic publicizing the fact that ISIL had conducted 12
 19 suicide attacks in Mosul, succeeding in killing 412 Peshmerga and Iraqi forces, and listing the numbers
 20 of Abrams tanks, Humvees, reconnaissance planes, and other vehicles that ISIL had destroyed. *See*
 21 Exhibit 6 (filed under seal).

22 ALHAGGAGI engaged in a similar scheme to aid ISIL with another encrypted messaging
 23 application user using the username Bank al-Ansar, which translates as “Bank of the Supporters.” In
 24 this conversation, Bank al-Ansar asked ALHAGGAGI if he could open social media accounts on their
 25

26 ³⁴ This appears to be the same Muhammad al-Adnani whom ALHAGGAGI himself had
 27 referenced in earlier conversations with the FBI Source, saying that a speech by al-Adnani had
 28 convinced ALHAGGAGI not to try to travel to Syria to join ISIS, but instead to find ways to aid ISIS
 while in the United States. *See* fn.7, *supra*.

behalf; ALHAGGAGI did so, opening a Twitter, Facebook, and Gmail account for Bank al-Ansar, and then passing along the login information. Bank al-Ansar then explicitly asked ALHAGGAGI, “Brother, do you support the Caliphate State?” to which ALHAGGAGI replied, “of course.” The conversation, translated from Arabic by FBI linguists, is pasted below in its entirety.

DATE/TIME (UTC)	FROM	CONTENT
10/31/16 10:23:08 PM	Barud	Greetings. I am ready to create accounts.
10/31/16 10:23:31 PM	Bank al Ansar	Greetings.
10/31/16 10:23:57 PM	Bank al Ansar	Are you using VPN?
10/31/16 10:24:30 PM	Barud	Yes, I use the VPN and Tor, and every other day I change the mac address.
10/31/16 10:24:51 PM	Bank al Ansar	We create Twitter or Facebook
10/31/16 10:24:55 PM	Bank al Ansar	T
10/31/20 10:25:26 PM	Barud	Whatever you want. Do you want me to send them to you here directly?
10/31/16 10:26:11 PM	Bank al Ansar	Yes, create two and send them.
10/31/16 10:26:24 PM	Barud	Twitter or Facebook?
10/31/16 10:26:31 PM	Bank al Ansar	Yes.
10/31/16 10:26:51 PM	Barud	Okay, give me ten minutes and I will start.
10/31/16 10:27:07 PM	Bank al Ansar	May God protect you.
10/31/16 10:39:05 PM	Barud	The Facebook 2*****62 Password Allahrabi
10/31/16 10:39:15 PM	Barud	Give me a few minutes and I will do Twitter.
10/31/16 10:49:45 PM	Barud	Twitter, sheikh, is-
10/31/16 10:51:03 PM	Barud	-415*****58 Password Allahrabi
10/31/16 10:51:26 PM	Bank al Ansar	Brother, it is better to do the Facebook in an email.
10/31/16 10:52:54 PM	Barud	Good news my dear, I will add an email in minutes.
10/31/16 10:57:29 PM	Barud	The email.
10/31/16 10:57:57 PM	Barud	101*****a@gmail.com Password Mumiaabujamal
10/31/16 10:58:13 PM	Barud	I have not added it to the account yet.
10/31/16 10:58:17 PM	Barud	One minute.
10/31/16 11:01:20 PM	Barud	It is done, sheikh.
10/31/16 11:06:31 PM	Barud	As of tomorrow, God willing, I will guarantee ten accounts; if it is not every day, it will be every other day.
10/31/16 11:07:33 PM	Bank al Ansar	Brother, do you support the Caliphate State?
10/31/16 11:08:39 PM	Barud	Of course.
10/31/16 11:56:02 PM		Good; then I will create for you a channel where you can put your accounts.
10/31/16 11:56:28 PM	Bank al Ansar	https://telegram.me/joinchat/DR*****Q

The email address referenced above was found on the laptop seized from ALHAGGAGI's

1 residence on November 29, 2016. Bates US-007444. The Facebook account referenced above appears
2 to have been verified using a telephone number that was registered on ALHAGGAGI's ZTE telephone
3 as an alternate number used to receive text messages through an app called Textmeup. According to
4 publicly available intelligence reports, Bank al-Ansar has identified itself as "a part of" the pro-ISIL
5 Afaaq Electronic Foundation technological group, and is tasked with "providing supporters of the
6 mujahideen with ready-made accounts." The attached publicly available intelligence report from the
7 SITE Intelligence Group, an American company that tracks online activity of jihadist and other hate
8 groups, indicates that Bank al-Ansar claimed it had provided ISIL fighters with 5700 Twitter accounts
9 and 1100 Facebook accounts as of November of 2016. In other words, by working with Bank al-Ansar,
10 the defendant knowingly and willingly helped to provide ISIL fighters with social media and
11 communications tools they needed. Exhibit 7.

12 *c. ALHAGGAGGI Obtained a Bomb-Making Manual Produced By ISIL*

13 On several occasions in his communications with the FBI Source online, and later with the FBI
14 UCE, ALHAGGAGGI suggested that he had obtained a file from "the brothers" showing him how to
15 make a bomb. In fact, a bomb-making manual written in Arabic was recovered from ALHAGGAGI's
16 laptop computer. A complete translation of the manual is attached as Exhibit 3, filed under seal.
17 Among the more gruesome highlights, the manual depicts what appears to be a passenger train waiting
18 at a platform, under a title proclaiming "the deadliest, most destructive, and most debilitating" bombs.
19 The manual uses diagrams and schematics to instruct its readers on how to make funnel bombs and
20 "anti-personnel bombs" using, among other things, ball bearings. Just in case there was any doubt about
21 the source of the manual, one of the final instructions in the manual shows readers how to affix an ISIL
22 flag logo to the explosive device once constructed. FBI personnel trained in bomb detection have
23 reviewed the manual and have determined that its contents are authentic, and deadly, and that similar
24 bombs have been used in attacks throughout the Middle East. Perhaps the most troubling evidence
25 regarding this bomb manual found on ALHAGGAGI's computer was that the file had apparently last
26 been accessed on ALHAGGAGI's computer on approximately November 26, 2016, just before he was
27 arrested. This is consistent with a conversation that ALHAGGAGI had on an encrypted messaging
28

1 application on his ZTE phone, described in further detail below.

2 *d. ALHAGGAGI Tried To Learn Online How to Construct a Bomb Triggered By a*
3 *Mobile Phone*

4 A search of ALHAGGAGI's ZTE cell phone (*not* the Samsung cell phone that ALHAGGAGI
5 identified during his post-arrest statement) revealed that on approximately November 27, 2016,
6 ALHAGGAGI had been having conversations with unknown individuals online on how to construct a
7 bomb triggered by a mobile phone. Specifically, using the handle Qurrat al-'Ayn, ALHAGGAGI wrote
8 in Arabic, "I know how to make a bomb with shrapnel and how to make a detonator, but I cannot install
9 it on a mobile phone." ALHAGGAGI continued that if one was serious, one would use concentrated
10 nitric acid. ALHAGGAGI said that he liked using ball bearings, because they "fly far away." Another
11 user, using the handle VIP, provided further instructions, suggested that the ball bearings should be
12 submerged in acid to "have an impact on wounds." Excerpts of the interchange between ALHAGGAGI
13 and VIP are attached as Exhibit 8, under seal, to protect public safety.

14 Nor was ALHAGGAGI's search for bomb-making know-how limited to his discussion with
15 VIP. In fact, several days prior to this discussion, on November 7 through November 14, 2016,
16 ALHAGGAGI searched on Google for H_2SO_4 , which is the chemical formula for sulfuric acid, an
17 important ingredient in manufacturing certain explosives; he also searched for "electric matches,"
18 electric matches, and different kinds of igniters.

19 *e. ALHAGGAGI Searched On The Internet For Large Halloween Parties*
20 *In the Bay Area To Attack*

21 After ALHAGGAGI spurned the FBI UCE and FBI Source, agents kept him under 24x7
22 surveillance for as long as possible while they developed enough information to make an arrest. While
23 he was still out of custody, one date stood out for agents as a particularly worrisome date: October 31 -
24 Halloween. This is because ALHAGGAGI had specifically mentioned to the FBI Source that he
25 thought he might be able to kill more people in his bar/nightclub attacks on Halloween, when such
26 locations tended to be particularly crowded. Specifically, in one of his earlier online conversations with
27 the FBI Source, ALHAGGAGI said, "... I'll get some cocaine for every gram of cocaine I'll add 2grams
28

1 of strychnine... you only need 0.5 grams... buy that extra is just to make sure... Yup, I've been doing a
 2 lot of research... I'm learning how to make bombs now... the brothers sent me some files.... But they
 3 aren't very detailed so I'm waiting for more." The FBI Source replied, "How many people do you think
 4 you can get with the powder?" ALHAGGAGI replied, "First day I'm pretty sure I could get up to 20
 5 ppl on *Halloween I could get about 100 or more*," (emphasis added). Exhibit 1 at pg. 84.

6 A search of ALHAGGAGI's electronic devices revealed that agents were entirely correct to be
 7 worried about ALHAGGAGI's movements on Halloween. In mid-October, in the days leading up to
 8 Halloween, ALHAGGAGI searched several times for "Alcatraz island Halloween," and "Alcatraz island
 9 Halloween event 2016." ALHAGGAGI also looked at a San Francisco tourism website for Halloween
 10 events for 2016, and read online reviews for Halloween events on Alcatraz. The government suspects
 11 that ALHAGGAGI was looking for Halloween events occurring on Alcatraz Island because if he
 12 conducted an attack there, victims would presumably be isolated and emergency responders would take
 13 longer to arrive by boat. Perhaps even more troubling, though, given ALHAGGAGI's earlier statements
 14 to the FBI UCE that he wanted to target his attacks on particular locations around the UC Berkeley
 15 campus was the fact that he visited the UC Berkeley student newspaper website to look for Halloween
 16 events in Berkeley. Most alarmingly, though, ALHAGGAGI actually had done research on how to use
 17 strychnine as a poison – on his laptop (the same laptop from which the ISIL bomb manual was
 18 recovered) agents recovered a PowerPoint presentation, apparently written by students at a school with
 19 which ALHAGGAGI has no known affiliation, regarding strychnine and its dangers. The PowerPoint is
 20 attached to this sentencing memorandum as Exhibit 2, sealed to protect public safety.

21 *f. ALHAGGAGI Had Numerous False IDs, Including One Bearing His Photograph To*
 22 *Help Conceal His Role in Attacks*

23 A search of ALHAGGAGI's residence revealed the presence of numerous identification
 24 documents that appear to have been stolen or fraudulently produced, over 45 fake credit cards, at least
 25 25 blank debit cards, a credit card hot foil stamping machine, a credit card embossing machine, and a
 26 credit card reader. ALHAGGAGI apparently survived on a day-to-day basis by engaging in fraud.
 27 Agents searching ALHAGGAGI's electronic devices uncovered additional evidence indicating that he
 28

1 routinely ordered items online using false credit cards and fake shipping addresses, then intercepted the
2 packages on delivery, much in the same way he ordered clothes from Trunk Club, as described above, to
3 an address down the street from his house. Agents also recovered a California driver's license bearing
4 ALHAGGAGI's photograph but the name and address of another individual. This was particularly
5 troubling because ALHAGGAGI had suggested to the FBI UCE in one of their meetings that he would
6 use this false identification to conceal his participation and his true identity in any terrorist attacks he
7 might undertake. A search of ALHAGGAGI's laptop revealed that ALHAGGAGI had taken a
8 screenshot photograph of this false identification on October 9, 2016, nearly three weeks *after* his last
9 interaction with the FBI UCE. It is unknown at this time why ALHAGGAGI took that photograph, or
10 who he may have sent it to. Also on ALHAGGAGI's laptop computer, agents recovered a screen shot
11 of a webpage apparently from the dark web, offering passports without photographs in them for sale,
12 from various countries – the United Kingdom, the Netherlands, Germany, France, Brazil, Finland,
13 Canada, Australia, and Latvia. The screenshot appeared to show that someone was signed into the
14 webpage using the username bucc50, which is similar to the "bucc66" handle that ALHAGGAGI had
15 been using to communicate on encrypted messaging applications. Agents also recovered a screenshot of
16 ALHAGGAGI's Samsung phone, taken on October 20, 2016, opened to a webpage offering credit card
17 CVV numbers for sale, and another screen shot showing a list of account holders at an unknown
18 financial institution, including the account holders' full names, social security numbers, dates of birth,
19 and mothers' maiden names. Agents also recovered numerous photographs on ALHAGGAGI's
20 electronic devices of credit cards and identification cards belonging to people other than ALHAGGAGI,
21 and one blank, sample driver's license from the District of Columbia.

22 *g. ALHAGGAGI Had Other ISIL- and Terrorism-related Materials On His Electronic*
23 *Devices*

24 ALHAGGAGI had numerous other ISIL-related materials on his electronic devices. In one
25 particularly chilling video ALHAGGAGI recorded a car on fire burning on the side of a highway.
26 Agents who are familiar with ALHAGGAGI's voice have confirmed that it is in fact ALHAGGAGI on
27 the recording. During the short video, ALHAGGAGI narrated the following (along with an unidentified
28

1 male associate of ALHAGGAGI's ("UM")):

2 ALHAGGAGI: [Coughs] "--do not..." [coughs] "We warned you, Americans, you
3 scoundrels, God damn you, that this Caliphate is in-in America, in the
4 state of California; soldiers' missions."

4 [Sounds of traffic and people speaking]

5 ALHAGGAGI: With God's favor, we [coughs] --with the favor of God Most High, we, ah,
6 caused an accident for this filthy police officer, by way of killing him and
7 starting a fire in his car; it was an ambush carried out by the soldiers of the
8 State.

8 [Sounds of sirens and traffic and people speaking in the background]

9 UM: [UI] bullet--

10 ALHAGGAGI: Oh, God. Oh, God. Oh, God. And it is going to explode now, God
11 willing.

11 [Sounds of traffic and sirens]

12 UM: That's a bullet getting heated?

13 ALHAGGAGI: Yes. Do you have a weapon with you? Yes. Do you have a weapon with
14 you so we can kill the rest of them? Do you have bullets?

15 UM: No. All of it, I-I-I used it to, for training today.

16 ALHAGGAGI: You swear?

17 UM: Yeah, I'm waiting on-on the next package.

18 ALHAGGAGI: I swear if I had a weapon I would kill them all, by God.

19 UM: Yes, yes. But we do not have any. We do not have any. If we had--

20 ALHAGGAGI: The bullets...you were silly, you were playing with them. Don't-don't
21 play with that. I swear, bro...Praise God, we could have killed one, two,
22 three, four. Bro, we look like--

22 UM: No, bro, at least— [video stops]

23 The timestamp on this video indicates that the file was created on June 25, 2016, several weeks before
24 ALHAGGAGI encountered either the FBI Source or the FBI UCE. Accordingly, any suggestion that
25 this case was some sort of FBI sting operation, manufacturing a crime that otherwise didn't exist, is
26 entirely baseless. A full copy of the video, and a translated transcript, are attached to this sentencing
27 memorandum as Exhibit 9.

Also on ALHAGGAGI's laptop computer agents recovered the following items:

- A recent issue of Dabiq, a well-known ISIL propaganda magazine;³⁵
- A screen shot of a Mac-11 machine pistol being sold on the website armslist.com, indicating that the photograph had last been accessed on September 29, 2016;
- A screen shot indicating that someone had search for a United States Air Force recruiting office in Hayward, California, as recently as October 13, 2016;
- A screen shot indicating that someone had accessed the "BlackBank Bitcoin Market" as recently as September 29, 2016, using a Tor browser;
- A photograph of an unknown individual smiling and posing in front of an ISIL flag, with firearms in the background, last accessed on November 6, 2016;
- Another photograph of a different unknown individual posing in front of an ISIL flag, again with firearms in the background, last accessed on October 31, 2016;
- Evidence that the defendant's laptop had logged into wi-fi networks in Tijuana, Mexico, which corroborated the defendant's statements to the FBI Source and FBI UCE that he was familiar with Mexico, and planned to flee there after conducting terrorist attacks on behalf of ISIL in the Bay Area.

h. ALHAGGAGI's Post Arrest Conduct

The government received deeply troubling reports from not one but two different jailhouse informants, about additional attacks that ALHAGGAGI was apparently planning on U.S. government facilities, *after* having been taken into custody. In order to protect the identities of these informants, and in order to prevent any potential compromise to the facilities ALHAGGAGI was apparently plotting against, the government files further information about ALHAGGAGI's post-arrest conduct under seal as Exhibits 10 and 11 to this sentencing memorandum.

III. GUIDELINE CALCULATIONS

1. The Terrorism Enhancement Under U.S.S.G. § 3A1.4 Is Plainly Applicable

The government respectfully but emphatically disagrees with the guideline calculations set forth in the Presentence Report (PSR). Primarily, the government disagrees with the PSR's assessment that U.S.S.G. § 3A1.4, the terrorism enhancement, does not apply. While the government greatly respects the work and expertise of U.S. Probation, in this case their failure to apply the terrorism enhancement falls far short of the mark. In Probation's defense, the government understand this case to be one of the first in this district applying the terrorism enhancement under U.S.S.G. § 3A1.4. In any event, as

³⁵ See, e.g., "The Latest Issue of ISIS's Magazine Is As Terrible As You'd Think," by Madison Pauly, *Mother Jones*, November 19, 2015

discussed above, the defendant in this case:

- Plotted to plant a car bomb outside a gay nightclub in San Francisco, in the name of ISIL;
- Plotted to start fires in residential areas of the Berkeley Hills in such a manner as to cause as many casualties and as much damage as possible, in the name of ISIL;
- Plotted to plant backpack bombs on routes used by first responders and emergency personnel responding to these attacks, in the name of ISIL;
- Plotted to lace strychnine into cocaine or drinks at large gatherings in nightclubs with 100 or more people, to kill them;
- Left a suicide note claiming responsibility for his attacks, which would bear “the pure fingerprints” of ISIL;
- Obtained a bombmaking manual produced by ISIL, and asked the “brothers” for additional guidance;
- Kept firearms on his person for protection, including at meetings with an FBI undercover agent, whom he openly suspected of being in law enforcement
- Opened Twitter, Facebook, and Gmail accounts on behalf people whom he believed, and *who in fact were*, sworn members of ISIL;
- Such accounts *were actually used to repost ISIL propaganda*;
- After being arrested, the defendant plotted additional attacks against U.S. government facilities.

In other words, this case is not even be a borderline case: failing to apply the terrorism enhancement under these deeply egregious facts would render the enhancement meaningless.

The terrorism enhancement, U.S.S.G. § 3A1.14, provides as follows:

- (a) If the offense is a felony that involved, or was intended to promote, a federal crime of terrorism, increase by 12 levels; but if the resulting offense level is less than level 32, increase to level 32.
- (b) In each such case, the defendant’s criminal history category from Chapter Four (Criminal History and Criminal Livelihood) shall be Category VI.

U.S.S.G. § 3A1.4. Application Note 1 to that guideline further provides that a “federal crime of terrorism” is defined by the “meaning given that term in 18 U.S.C. § 2332b(g)(5). That statute in turn provides a two-part definition. First, a federal crime of terrorism is “an offense that is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct.” 18 U.S.C. § 2332b(g)(5)(A). Second, the offense must be a violation of a specific federal criminal statute listed in 18 U.S.C. § 2332b(g)(5)(B). That list explicitly includes, among other

things, the material support statute, 18 U.S.C. § 2339B, one of the statutes to which the defendant here pled guilty. Accordingly, reading the guideline and the definitional statute together, the terrorism enhancement is applicable in this case if the offense “involved, or was intended to promote... an offense that is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct.” U.S.S.G. § 3A1.4; 18 U.S.C. § 2332b(g)(5)(A).

The Ninth Circuit has implicitly approved of the applicability of the terrorism enhancement. *United States v. Tankersley*, 537 F.3d 1100, 1108 (9th Cir. 2008)(approving a 12-level upward departure for defendant who targeted private building in an ecoterrorism case, on the grounds that her co-defendants, who targeted government buildings, all received the enhancement under U.S.S.G. § 3A1.4, and that to do otherwise would cause unnecessary sentencing disparity); *see also United States v. Tubbs*, 290 Fed. Appx. 66 (9th Cir. 2008). The Ninth Circuit also apparently approved of the application of the enhancement in *United States v. Ressam*, 679 F.3d 1069 (9th Cir. 2012). There, although the court did not directly address the applicability of U.S.S.G. § 3A1.4, it did note that the defendant’s guideline range was 65 years to life. *Id.* at 1089. The Court also found that a 22-year sentence for the defendant there was substantively unreasonable, based on those guideline calculations. In addition, at least one other district court has applied the terrorism enhancement in a case where a defendant was charged with making threats on social media on behalf of ISIL. *See United States v. Yassin*, 16-CR-03024-01-MDH, Plea Agreement, Docket No. 120.

The Second Circuit has also directly addressed the contours of the applicability of U.S.S.G. § 3A1.4 in a seminal case, *United States v. Awan*, 607 F.3d 306 (2nd Cir.), *cert. denied*, 562 U.S. 1170 (2010). In *Awan*, the defendant sent money from the United States to the Khalistan Commando Force (KCF), a Sikh terrorist organization responsible for carrying out murders and bombings in India. *Id.* at 310-11. He also attempted to recruit an associate to travel to Pakistan to receive explosives training for the KCF. *Id.* The defendant was accordingly convicted of providing material support to terrorists, conspiracy to do the same, and money laundering. The district court declined to apply U.S.S.G. § 3A1.4, reasoning that “it is speculative to conclude that the defendant had any particular motive in mind, and in particular, that he was motivated by a desire to influence the policies of the Indian government or

retaliate for some unspecified wrong.” *Id.* at 316. The Second Circuit found that the district court committed procedural error, and reversed. The Second Circuit reasoned that while the defendant may well have been motivated by non-political reasons, such as a desire for personal prestige obtained by associating with well-known Sikh terrorists, the government could still prove that the defendant’s offenses themselves were “calculated to influence ... the conduct of government ...” even if he lacked a specific political motive for committing them. *Id.* at 317. “A hired assassin who kills a political leader at the behest of a terrorist organization can hardly disclaim that his crime was calculated to influence the conduct of government simply because he was motivated by greed rather than politics.” *Id.* at 318. In short, as the Second Circuit noted, the defendant’s actual motive “is simply not relevant.” *Id.* What matters is whether the offense itself was calculated to influence or affect the conduct of government.

Applying *Awan* to the facts here, it is plain that the terrorism enhancement applies. Whether ALHAGGAGI was simply fantasizing, as he seems to suggest, is irrelevant. What matters is whether his act of opening social media accounts on behalf of members of ISIL was “calculated to influence or affect the conduct of government.” In pleading guilty, the defendant admitted that he “participated” in a chatroom on an encrypted messaging application, entitled (in Arabic) “Allah is with those who endure.” Docket No. 77. That particular chatroom was extracted from data on ALHAGGAGI’s ZTE telephone, and is identified on the data extraction as “Session 56.” The Session 56 chatroom in which ALHAGGAGI admits participating is replete with posts from other users declaring hatred and violence towards the United States, the Syrian government, the Iraqi government and a host of other enemies of the Islamic State,³⁶ and seeking to affect to the conduct of those governments. Of particular relevance, however, to the actions of the defendant is the following post in Session 56 on November 11, 2016, from

³⁶ As just one example, on November 5, 2016, within minutes of the first post in the defendant’s chatroom, a fellow user using the handle “I took my path and no, I will not deviate” posted the following: “Support the Islamic State O Lord of the worlds. O Allah, support our Mujahidin brethren in Mosul and in every part of the earth in which they fight your enemies. O Allah, straighten their shooting and let them defeat Haydar al-Abadi [who was at time the Prime Minister of Iraq] and over Bashar [presumably referring to Bashar al-Assad, the president of Syria] and his soldiers in Syria and over the apostate factions that are present in Syria and over the infidel and secular Turkish army in Aleppo countryside. O Allah let them defeat the crusader coalition and those who fought under its umbrella and banner... O Allah, rejoice our hearts with supporting the Islamic State and enable it to defeat the polytheists and apostates and let them conquer the land of Muslims and liberate Jerusalem.”

1 someone using the handle “Migration Commando”:

2 11/11/2016 12:08:41 AM (UTC+O), (Migration Commando) 228315951

3 The bleeding wound a letter from one of the brothers:

4 A letter from one of the brothers:

5 To the owners of the invasion channels, we want Tweets in English on
 6 American hashtags that are against or pro-Trump. It appears that the
 situation among the Americans is worsening
 We want racist Tweets against or pro-Trump.
 7 Let us kindle strife and chaos in their country. Perhaps that will be a
 reason for them to withdraw their armies from our dear country or become
 8 too preoccupied to be concerned about us. Strengthen your determination,
 deliver it to the brothers.
 9 Let us turn the next week into hell on America, the head of infidelity.
 Consider it a sacrifice in anticipation of God's reward in the Hereafter and
 10 let all participate. You never know, o supporter, a Tweet from you could
 cause a divine conquest for your State.
 11

12 In other words, Migration Commando was participants in Session 56, including ALHAGGAGI, to post
 13 Tweets that would “kindle strife and chaos” in the United States, to cause the United States government
 14 to withdraw its “armies from our dear country or become too preoccupied to be concerned about us.”

15 Another follow-up post in the chatroom, from a user using the handle “Publisher”, was even more
 16 explicit:

17 11/13/2016 4:46:43 PM (UTC +), 294921903 (Publisher)
 18 Brothers...
 Open accounts in Twitter...
 And invade the American tags
 19 Some of you should instigate the racist whites
 Others should incite the repressed minorities :)
 20 Spread disorder! And intensify the spark
 Allah bless you!
 21

22 Just a few hours after this post in the chatroom, on November 14, 2016, the defendant was private-
 messaged by Abu Muharib Iraqi. After explaining that he had been sent to ALHAGGAGI by someone
 23 using the handle *Munasir-lil-Khilafah* [Supporter of the Caliphate], Abu Muharib Iraqi asked
 24 ALHAGGAGI to open Twitter accounts, which ALHAGGAGI did. The timing of these posts and the
 25 defendant’s subsequent actions is inescapable. The government submits that it shows proof beyond a
 26 reasonable doubt that by opening social media accounts, the defendant’s conduct was calculated “to
 27 influence or affect the conduct of government by intimidation or coercion, or to retaliate against
 28

1 government conduct.”

2 Moreover, the notion that the accounts ALHAGGAGI opened were used by ISIL members “to
3 disseminate news and not to impact the conduct of government” is particularly troubling. PSR
4 addendum, at para. 3. The PSR’s benign description that the accounts were used “to disseminate news”
5 is a factual mischaracterization. “Disseminating news” suggests that the accounts were used to share
6 articles from reputable news sources, whether English-language sources like the New York Times, or
7 Arabic-language sources like al-Jazeera. That is not what happened here. These accounts, to the extent
8 that they were used at all, were used by actual ISIL members to spread ISIL propaganda, most notably a
9 publication describing how many martyrdom operations ISIL had carried out in Mosul, how many
10 Kurdish and Iraqi soldiers had been killed as a result, and how many tanks, Humvees, reconnaissance
11 planes, and other vehicles ISIL had destroyed. Examples are attached as Exhibit 6, filed under seal. The
12 posts appear to be attributed to an entity called ‘Amaq, which is widely recognized as a propaganda
13 machine used frequently by ISIL. For example, a 2016 article in the New York Times described ‘Amaq
14 as “putting out the Islamic State’s message, and the veneer of separation between the terrorist group and
15 what has now become its unacknowledged wire service is quickly disintegrating.” “A News Agency
16 With Scoops Directly From ISIL, and a Veneer of Objectivity,” by Rukmini Callimachi, *New York*
17 *Times*, January 14, 2016 (last accessed December 4, 2018).

18 The case for applying U.S.S.G. § 3A1.4 is even more compelling when one considers
19 ALHAGGAGI’s deeply disturbing and troubling interactions with the FBI UCE and FBI Source. As
20 described above in further detail, ALHAGGAGI described at great length the numerous terrorist attacks
21 he was contemplating conducting around the San Francisco Bay Area, including planting a car bomb
22 outside a gay nightclub in San Francisco, planting backpack bombs around downtown Oakland and the
23 UC Berkeley campus, and distributing strychnine-laced cocaine to nightclub patrons to kill them.
24 Unbeknownst to agents until they arrested him, ALHAGGAGI was apparently so poised to conduct
25 these attacks that he had prepared a suicide note claiming responsibility for the attacks on behalf of ISIL.

26 Nor can one simply dissociate or ignore those earlier interactions of ALHAGGAGI’s with the
27 FBI UCE and the FBI Source from his later interactions *with actual ISIL members* online. All of those

earlier interactions with the FBI UCE and FBI Source were plainly part-and-parcel of the defendant's later efforts to open social media accounts on behalf of ISIL. Specifically, he began by contemplating physical attacks in the Bay Area. Upon meeting the FBI UCE and suspecting (correctly, as it turned out) that the FBI UCE was in fact working for law enforcement, the defendant retreated to provide support to ISIL in a manner that he believed was more secure – online, through encrypted messaging applications. Thus, those initial statements to the FBI UCE and FBI Source are illustrative of the defendant's willingness and intent to later provide support to ISIL in the form of opening social media accounts on their. In those initial statements with law enforcement, the defendant stated, among other things:

You know how Saudi has a lot of our scholars locked up... what we could do is threaten Saudi in exchange for American [UI]... Like every day passes by with you guys releasing our brothers a bomb is going to blow up... with you guys not* releasing."

Exhibit 1. In short, the words of the defendant himself abundantly demonstrate that in aiding ISIL he was calculating to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct.

Finally, and perhaps most importantly, the notion that ALHAGGAGI's conduct was not intended to impact the conduct of government flies in the face of logic. ISIL's very raison d'être is to create and sustain a caliphate. In order to achieve that goal, they need to fight governments, both governments in the territory where they seek to establish that caliphate, such as Iraq and Syria, and governments outside the territory that nevertheless oppose the establishment of a caliphate, such as the United States, Jordan, Turkey, France, and the United Kingdom. In order to fight those governments, ISIL needs to recruit soldiers. To recruit those soldiers, ISIL needs to spread propaganda, glorifying their actions, in particular their suicide operations. ISIL's main method of spreading that propaganda is on social media. ALHAGGAGI unambiguously and willfully opened social media accounts for people whom he believed, and who in fact were, members of ISIL seeking to promote ISIL's cause. The defendant retreated to aiding ISIS online, because he had been thwarted by an FBI UCE in his attempts to carry out actual terrorist attacks across the San Francisco Bay Area in the name of ISIS. The only reasonable interpretation of U.S.S.G. § 3A1.4 is to apply it here.

2. The Defendant Should Be Denied Acceptance of Responsibility

The government further maintains that the defendant should not receive a reduction for acceptance of responsibility under U.S.S.G. § 3E1.1. Application Note 3 to that guideline notes that “entry of a guilty plea prior to the commencement of trial, combined with truthfully admitting the conduct comprising the offense of conviction, and truthfully admitting or not falsely denying any additional relevant conduct for which he is accountable... will constitute significant evidence of acceptance of responsibility... However, this evidence may be outweighed by conduct of the defendant that is inconsistent with such acceptance of responsibility. A defendant who enters a guilty plea is not entitled to an adjustment [for acceptance of responsibility] under this section as a matter of right.”

The government maintains that the defendant’s deeply troubling post-arrest conduct while in custody constitutes conduct that is “inconsistent” with an acceptance of responsibility. That post-arrest conduct is described in further detail in the attached FBI 302s, attached as Exhibits 10 and 11, documenting interviews with two jailhouse inmates (not one, as suggested in the PSR). Because of the nature of the allegations, and in order to protect the informants’ identities, the government files those 302s describing the defendant’s post-arrest conduct under seal.

Applying the terrorism enhancement, the government arrives at an adjusted offense level for the defendant of 38 (26, pursuant to U.S.S.G. 2M5.3, plus 12). The defendant’s Criminal History Category is VI, after application of the terrorism enhancement. *See* U.S.S.G. § 3A1.4(b). The maximum possible sentence to which the defendant is exposed, assuming for consecutive sentences on each count, is 47 year, or 564 months. Accordingly, the defendant’s guideline range, assuming no acceptance of responsibility, is 360-564 months.

IV. GOVERNMENT’S SENTENCING RECOMMENDATION

The government recommends a middle-of-the-range guideline sentence of 396 months, followed by life on supervised release, a low-end fine of \$50,000, restitution in the amount of \$5,273.10, forfeiture, and a special assessment of \$400. This is a necessary but sufficient sentence for several reasons. First, as a guidepost to avoid unnecessary sentencing disparities, 18 U.S.C. § 3553(a)(6), the government refers the Court to the Ninth Circuit’s several opinions in *United States v. Ressam*,

culminating with *United States v. Ressam*, 679 F.3d 1069 (9th Cir. 2012). There, the so-called Millennium LAX bomber was twice sentenced by the district court to 22 years; and twice, the Ninth Circuit found that sentence substantively unreasonable. *Id.* Ultimately, Ressam was sentenced to 37 years, or 444 months. Ressam was closer to completing an actual attack than the defendant here, having actually obtained explosives. On the other hand, the defendant here had obtained a bombmaking manual from ISIL, and was actively searching for additional information, indicating that while he may not have been as poised to attack as Ressam, he was clearly heading down that path. Moreover, much like Ressam, ALHAGGAGI contemplated attacking high-profile, crowded targets. In addition, it should be noted that Ressam cooperated, at least briefly, with the government, and his cooperation led to at least to some convictions; however, he later recanted many of his statements, undermining prosecutions of other individuals. Taking all of these factors into consideration, the government believes that a sentence of 396 months, which is 4 years less than what Ressam ultimately received, is a fair and just sentence that avoids potential disparities.

More to the point, though, a 396 month sentence is abundantly warranted here, given the nature and circumstances of the offense, and the history and characteristics of the defendant. 18 U.S.C. § 3553(a)(1). The scope of destruction and the pure evil that ALHAGGAGI sought to unleash on this community knew no bounds. Over the course of the government's investigation, ALHAGGAGI indicated that he wanted to:

- Bomb particular areas because they were crowded (e.g., Oakland Chinatown, AT&T Park)
- Bomb particular areas because there would be students (dorms at UC Berkeley);
- Start fires in particular areas because there would be children (Tilden Park);
- Start fires in particular areas known to be used for recreational purposes (the Berkeley Hills);
- Bomb particular areas known for gay nightlife (San Francisco); and, among other things,
- Invite non-Muslim friends over to his house so that he could kill them,

Had ALHAGGAGI been able to accomplish even half of the things he planned to do in the name of ISIL, the San Francisco Bay Area would have been the victim of a series of devastating, coordinated

1 terrorist attacks, the likes of which have fortunately never been seen before in this district. If not for the
2 quick-thinking actions of the FBI and its undercover agent, it is no exaggeration whatsoever to say that
3 this sentencing likely would have been about counting the bodies of victims, instead of counting the
4 number of fake Twitter accounts and false IDs. There is no doubt as far as the government is concerned
5 that ALHAGGAGI was prepared to go “live.” Why else did he do research on the dangers of
6 strychnine? Why else was he looking online for fake passports? Why else did he obtain a bomb manual
7 from ISIL? Why else was the bomb manual not enough? That, is why else was he trying get additional
8 details on that manual from “the brothers” who initially gave it to him? And perhaps most importantly,
9 why else did ALHAGGAGI write a suicide note outlining all of his attacks, and then claiming
10 responsibility on behalf of ISIL?

11 The only reasonable explanation is that ALHAGGAGI was ready and willing to carry out his
12 attacks. This was no joke. To suggest that it was a joke is not just nonsensical, but offensive.
13 Nonetheless, here is how the defendant explains his actions, as described in the PSR:

14 I was smoking a lot of weed, staying up really late and sleeping a lot
15 during the day. As I always do, I was avoiding my father, who lived in the
16 same house. When he would get up, I would go to bed. Those weird hours
and the lack of a purpose to fill them with led to deep boredom and I
started to spend a lot more time online.

17 PSR para. 93. This explanation borders on the absurd. No doubt this Court has, over the course of its
18 experience, heard many arguments about the dangers of marijuana, some perhaps valid, some perhaps
19 not so valid. This has to be the first time that anyone has suggested that as a result of smoking too much
20 marijuana, he decided it would be amusing to plan terrorist attacks across the Bay Area in the name of
21 ISIL. On top of that plainly ridiculous explanation, the defendant points a vaguely inculpatory finger at
22 his father. These statements, read in conjunction with the troubling statements that ALHAGGAGI made
23 while in custody to fellow inmates, lead the government to the inescapable conclusion that
24 ALHAGGAGI’s “acceptance” of responsibility is disingenuous, empty, and hollow.

25 More importantly, though, from a sentencing perspective, the defendant’s failure to genuinely
26 accept responsibility for his actions leaves the government convinced that the he remains a serious threat
27 to the safety of the public. 18 U.S.C. § 3553(a)(2)(C). He shows virtually no remorse for any of the
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terrorist plots he was contemplating in the Bay Area, no sorrow for the people in his community who may have died had he used the instructions he apparently obtained from ISIL to construct actual explosive devices. Nothing in the PSR suggests that the defendant has had a sudden change of heart, and that he now loves the United States and the people in his community. Particularly troubling to the government are ALHAGGAGI's boasts about being able to easily access firearms, because he did in fact show up to a meeting with the FBI UCE with a gun. Nowhere in the PSR does ALHAGGAGI address this ability to traffic in firearms. For these reasons, the government recommends that in addition to a 396-month sentence, ALHAGGAGI also be sentenced to life on supervised release. The government is also concerned by the defendant's apparent failure to explain his identity theft activities. While those offenses may at first blush seem less troubling than the terrorism allegations against the defendant, they do highlight the defendant's life of crime as a grifter and an unrepentant thief. Accordingly, the government recommends a low-end fine of \$50,000, and restitution in the amount of \$5,2713.10.

Finally, a 396-month mid-range guideline sentence is appropriate to promote respect for the law, provide just punishment for the offense, and deter others from engaging in similar conduct. ISIL is a heinous organization that has caused unspeakable harm to those resisting its totalitarian, backwards way of life. The vast majority of ISIL's victims are in Muslim countries, although the group has caused and inspired others to cause death and destruction around the world, from Baghdad to Paris to New York City to San Bernardino. Those who seek to aid ISIL ought to be seriously punished, no matter what the context. The fact that the defendant was planning the kinds of attacks he was planning in the Bay Area is reason enough for a 396-month sentence. But the fact that after being deterred by an undercover agent he *then* sought to provide ISIL with assistance online underscores the need for a significant sentence. The Court will no doubt be well aware of ISIL's reputation for using social media and the Internet to distribute details of its most gruesome atrocities, from public beheadings to executions of suspected homosexuals.³⁷ ISIL may be on the retreat on the actual battlefield in Syria and Iraq. But

³⁷ See, e.g., "The Islamic State's Shocking War on Gays," by Ishan Tharoor, *Washington Post*, June 12, 2016, available at https://www.washingtonpost.com/news/worldviews/wp/2016/06/13/the-islamic-states-shocking-war-on-homosexuals/?utm_term=.a56f2937df78 (last accessed December 4, 2018)

1 they remain fighting on the online battlefield. ALHAGGAGI willingly and intentionally put himself
2 on that battlefield, on the wrong side. He should be sentenced as such.

3 **V. CONCLUSION**

4 For all of the reasons discussed above, the government calculates the guideline range at 360-564
5 months, and recommends a mid-range guideline sentence of 396 months, followed by life on supervised
6 release, a low-end fine of \$50,000, restitution in the amount of \$5,273.10, forfeiture, and a special
7 assessment of \$400.

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9 DATED: December 4, 2018

Respectfully submitted,

10 ALEX G. TSE
Acting United States Attorney

11 _____
12 /s/
S. WAQAR HASIB
Assistant United States Attorney
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